IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,
Plaintiff/Respondent,

vs.

GERALD ARMSTRONG,
Defendant/Appellant.

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 8

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL,)
Plaintiff,)
)
vs.)
)
GERALD ARMSTRONG,) No. 157680
Defendant.)
)

GARY W. THOMAS	JUDGE
JOHN P. MONTGOMERY	COURT EXECUTIVE OFFICER
ELAINE PASSARIS	REPORTER

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GERRY ARMSTRONG VIDEO INTERVIEW 6 NOVEMBER 1992

S = Spanky Taylor
G = Gerry Armstrong
J = Jerry Whitfield

S: We're here with Gerry Armstrong on the 6th of November 1992. Hi, Gerry.

G: Hi, Spanky.

S: Basically, what we're doing here is I want to find out a little bit about your Scientology experience, or, more than a little bit -- as much as we can, starting from when you got involved.

G: Ok.

S: So, tell me about that first.

G: I got involved in 1969 in Vancouver, British Columbia, Canada. And ... I spent a year and a half...

S: How old were you then?

G: Twenty-two. Spent about a year and a half in Vancouver. Worked in the local franchise, Scientology Little Mountain. And then in the beginning of '71 went off to save the world. Joined the Sea Org. Flew to LA. And was ... Signed my Sea Org contract at what was USLO. Then was on board the Bolivar, stationship down -- not exactly sure where it was...

S: San Pedro?

G: San Pedro, right. Then...

S: I loved the Bolivar.

G: And then by mid-February '71 was flown to New York, Madrid. Madrid took a train down to Algeciras. Algeciras across by ferry to Tangiers. There sitting in the Tangier harbor was the Apollo. I stayed on board except for brief missions off the ship or sometimes I'd go ashore for brief periods. But was on board 'til the fall of 1975. And we were, in those years, in Portugal, Morocco, Spain, and the little Atlantic islands -- Madeira, the Canarys, and then we made a circuit to the Caribbean islands -- Bermuda, Bahamas, Jamaica, Trinidad, Barbados, Netherlands Antilles.

S: Sounds like a Beach Boys saga. (Laughter) And you knew LRH?

G: Uh huh.

S: You married, your first marriage was... you married on Flag.

G: Yeah. I married his head messenger. Terry Gillham. Young Terry. She was a pretty good catch.

S: She was. She was.

G: I was organizationally a social climber. I really was. It just worked out that way, you know, I was in the right place at the right time I guess.

S: You had quite the wedding. I remember the photos very well.

G: Yeah? Yeah, I had a big double wedding along with Pat and Trudy Broeker.

S: That's right.

G: And through most of my time on board the ship I was the Legal Officer. We called it the Ship's Representative. I dealt with Immigration, Customs, and the Police and Harbor Master and handled all the needs of the ship while in port. And then I was the Public Relation's Officer Port Captain for a period of time. And then I was the Intelligence Officer through our time in the Caribbean. And when we went ashore, landed in Daytona, I was the Intelligence Officer again at the staging area for the Clearwater base which we had in Daytona at that time.

J: What's an Intelligence Officer?

G: Well...

S: It's a

G: ...they were talking about...

S: ... jumbo shrimp, what are those things called oxymorons?

G: Espionage. It's a Hubbard patterned -- his intelligence system, after Nazi system. Perfected, created, developed by Reinhardt Gehlen. And I was one person within a giant network of intelligence personnel operated by the Guardian's Office who were in turn operated by the Guardian, Mary Sue Hubbard, and L. Ron Hubbard. He merely directed on his long distance communication lines all the intelligence operations internationally.

J: What kind of intelligence operations -- we're talking about a church who has intelligence operations, a church with intelligence operations? Is that what you're saying? And you were there, you were involved in that? Is that what I'm hearing?

G: Right. Now I have a different perspective of course and I don't consider Scientology by any definition a "church" other than the fact that they have edifices -- buildings -- which could, if the activities therein were to change, could be churches. But the organization itself is not a church. But it's undeniable that it had intelligence organization and has been described as outside of the FBI and the CIA, the most formidable intelligence organization operating on the North American continent.

S: At this time, in the early times when you on the ship, you knew the offspring of L. Ron Hubbard. You knew his kids, as well?

G: Right.

S: Quentin and Diana, Arch and Suzette.

G: Right.

S: Tell me a little about them. I mean, you know, were they happy, were they well educated, were they ... because, of course, they were the offspring of this man with this tremendous wealth, did they receive the best of possible educations, did they lead a privileged life in terms of the...what was accessible to them in terms of in a society type of sense in terms of their education and their upbringing. Did they attend the finest finishing schools? Were they ... was Diana Hubbard a debutante. Do you know what I mean? Tell us about that.

G: I think she could have been a debutante but I don't think she was. I think that all the kids were pretty real in their own way, given the environment in which they found themselves and given the very odd circumstances of growing up in the Sea Organization. I suppose that the one I got closest to was Arthur. Arthur and I sort of ran tandem Sea Watch, or rather, gangway Quarter Master Watch for quite a period of time so I had the task of waking him up. He was pretty young at the time, maybe 13 or 14, I don't quite remember. It was always difficult waking him up and he would pull rank a little bit in that I didn't want to make too much noise waking him up in his cabin and there was always the threat that if you did anything out of line at all, Ron...

S: Son of Ron.

G: Son of Source.

S: Right, son of Source. Aauugh. That word.

G: But all of them, I was on Diana's Sea Watch and she was a good Conning Officer. I think that all of the kids were intelligent and I think that they were all decent, good people.

S: Happy? Unhappy?

G: I think both. You know, happy at times, unhappy at times.

S: Sort of normal then.

G: Pretty normal.

S: And Quentin?

G: Quentin, I think much the same thing. He probably was the oddest of the lot, relative to the Sea Org experience. But we got along fine. I always found him to be perhaps the most understanding, in a way, in almost as if he had ...

S: Sensitive?

G: Yeah, sensitive. compassionate. Didn't pull rank and wasn't threatening in any way.

S: So then you were at Daytona when the base was originally moved there.

G: Uh huh.

S: And from that point.

G: Then we moved to Dunedin. At that point I was busted from the Guardian's Office. I was in the Guardian's Office Intelligence Bureau. And Mary Sue or Nikki who was her communicator deemed me a security risk of some kind and so I was removed from the Guardian's Office and I was assigned to Hubbard's Communication Bureau. So I became what was called the Deputy LRH External Communications Aide when we moved to Dunedin which was in December of 1975 and we had a secret base for Hubbard and his personal staff and Mary Sue and her personal staff at Dunedin in an apartment complex I guess about maybe eight miles from Clearwater. And I stayed there until June of '76 at which time I was sent to Culver City here in Los Angeles to set up a staging area for what became the base that was built in La Quinta.

And I was only there for a brief amount of time. I was there to set up this unit along with three other messengers.
And Hubbard arrived, Mary Sue Hubbard arrived, and then I had

a fight with Nikki, and Hubbard then assigned me -- first I was taken out of that unit and I was kept locked up at the Intelligence Bureau in the Fifield Manor in Los Angeles.

J: You were locked up?

G: Right. I was kept under guard for a couple of weeks.

S: Which is where that Guardian's Office had moved to.

G: Right. The Intelligence Bureau of the G.O. was there. I was picked up by the D/Guardian for Intelligence Dick Weigand.

J: Isn't that falsely (sic) imprisonment. Isn't that illegal?

G: Yeah. It was clearly false imprisonment.

S: At this point do you feel much of what you had done had been illegal? On some level or another?

J: For Scientology.

G: Personally?

S: That you had done personally.

G: I clearly had been involved in some illegalities while... especially while I was on the ship. Smuggling things on and off and...

J: What kind of things? Money, drugs? Weapons?

G: We did move a lot of money around. Briefcases...

J: Go on.

G: Briefcases of money that were brought to the ship. Booze, cigarettes, that sort of stuff taken off the ship and run through Customs. And other things that were just done sort of borderline activities. But I was willing to do those sorts of things at that time and I considered that I was doing ...it was the greatest good for the greatest number.

S: When you were working in Intelligence did you ... were you involved with any "dirty tricks" against other Scientologists or other staff members?

G: I was aware of dirty tricks against staff members and I was aware of the way the Guardian's Office Intelligence Bureau worked to some degree because I had a lot of the policies. I had the Guardian's Office Intelligence hat, the Intelligence

Manual which trained people to lie and steal and create false identities and harrass the enemy.

J: Why would a church need to do that?

G: Well, a church doesn't need to do that, but Scientology's not a church.

J: Why would Scientology feel the need to be involved in that kind of activity?

G: Because Hubbard was afraid and his idea on dealing with enemies was to attack them. One of the ways that he attacked them was through covert means.

J: Why would a man as great as Hubbard who had THE technology to save the world, have to fear anyone?

G: Well, he didn't have the technology to save the world and he simply had fear because he had fear and he was never able to triumph over his fear, so he put his trust in attacking people as opposed to doing the rational things in life and he also had reason to fear because he had falsified his credentials, he had lied about his life and he was afraid of being exposed and he had also lied and cheated for many years. He knew that there were people around who knew what he really was.

S: Now how did you come to find this out?

J: Can I ask one question? Answer that but answer this one first because you've got me really interested. If Scientology could do what it says it could do, would you still be in it? If it had the technology to do what it says, would you still be in anything?

G: In answering that question you'd have to...if you assumed that if it could do what it says it could do it would have a different form from what it is, then the answer might be yes. But both things would have to be true. It would have to deliver and it would have to be different from its present form opposed from the form which I came to know and understand.

J: Thanks. That's what I wanted to know. Go ahead with Spanky. How did you find out this?

S: How did you come to know that in fact Hubbard had fabricated his credentials, had in fact developed this tremendous fear that he had of being found out, had this paranoia?

J: What credentials? What would he do when found out?

G: I guess the process of that discovery began when I first got involved with the Sea Organization. Of course I worked with the man for quite a period of time. I shot gnus with him in the desert after we left the ship. He twice assigned me to the RPF. I talked to many people about him. I read hundreds of thousands of his words. I listened to him and listened to his tapes so I had a great understanding before I ever came to the realization that what I'd been led to understand was false, but I needed that great understanding I think in order to know what the falsities were. But I was, I considered, quite fortunate in that in the beginning of 1980 and we then were in Gilman Hot Springs and there was a threat of a raid and we were required to go through...each person had to go through his...all papers in his area, whatever post he was on, and all personal papers, and destroy anything which showed Hubbard's control of the organization, anything which showed his intent to live at the Gilman Hot Springs' property, anything which showed his control of organization finances.

S: So now in January of '80 isn't that when, as far as the rest of the staff at the other organizations knew, L. Ron Hubbard went off the lines, so to speak, January '80 he was like... Did he in fact go off the line or was it just made to look like he went off the line at that point? Cause if what you're saying, if I'm following you correctly, do you know, there was this perception that he was now gone and had cut ties to the actual on-hands running of the organization.

G: Well, it's...part of that is true. There had been a gradual decrease, I would say, of his hands-on involvement, but even though he left from the location that he was at the beginning of 1980, he continued to run the organization. He just continued to run through a different conduit.

S: Now, so you went through the papers within your own specific area. Was this prior to your being assigned to the biography project?

G: No, this is what the biography project came out of. Because in the process of going through my things I was at that time responsible for the Household Unit at the Gilman Hot Springs property. One of my juniors was responsible for all of L. Ron Hubbard's stuff -- his personal effects which were stored at the Gilman property. She came to me with a box of very old materials, very old papers, and asked if they should be shredded. I looked through this stuff and saw that it all predated Dianetics so thought, it should be no risk whatsoever. It has nothing to do with his running the organization. So, I also saw that it had great historical value. And when we then began to look over inventories, began to go through his stuff we uncovered some 20 boxes of similar material. And I knew that this stuff, could form the basis for a library and was incredibly valuable for its history and just as original documents, and that it would form the basis for a biography. So, it was at that time that I petitioned Hubbard to be able to collect this stuff up to preserve it and to contract with an outside writer to do the biography.

He approved the petition in January '80. And then we communicated another couple of times before I then did not have what was that direct comm line to him, communication line. We could then no longer admit to a communication line to him. It still was there but we could not use it for fear of civil litigants or the government then being able to subpeona him.

S: As he was under a lot of legal threat.

G: Right.

S: Domestically, at that time, right?

G: Right.

J: Why would L. Ron Hubbard be under legal threat?

G: Because he controlled the organization.

J: What's wrong with that?

G: And because the organization was involved in criminal and tortious activities.

S: I think additionally the church had, was also under tremendous legal stress in terms of people who were filing suit against the church now for fraud. There were attempts made to name L. Ron Hubbard in a suit, to actually serve him or subpeona him which is when he sort of "poof."

G: Right.

S: Disappeared.

J: So he disappeared, he ran and hid.

G: Right.

J: So, hiding is pretty down on the tone scale.

S: So I hear, honey.

J: But that's what the great L. Ron Hubbard was doing. You were there and that's what you saw.

G: Yeah. I mean he did hide.

J: I'm not trying -- it's just very difficult, the reason I'm saying this, it's very difficult for somebody who's in Scientology to conceive that the great L. Ron Hubbard whom they've never met, but have only heard these wonderful things about, to even perceive or comprehend that this might have been ... might have occurred with this man. How can this man be human? He's not human. He was L. Ron Hubbard. The reason that we're doing this interview is so that other people can know. It's very easy for a non-Scientologist to understand those things. It's very difficult for a Scientologist because Scientologists don't get the type of information that non-Scientologists get. And yet you were there. You knew him. You worked with him for probably 15 years or so.

G: I was in the Sea Org for 11 years.

S: And Gerry, backing up a bit, you saw him as a fallible human being, am I correct?

G: Yeah.

S: I mean he had had illnesses.

G: Right.

S: A great many illnesses, a few illnesses?

G: Quite a few.

S: I know that he had these horrendous allergies which when we refer to them we would be heavily reprimanded and corrected and told they were not allergies they were sensitivities. (laughs) You know there was a brilliant way of sort of smoothing over things.

G: Right. Right. He continued to wear clothes when he was stark naked. Right.

S: Oh, yes. Yes, of course.

G: And we all did that in our own mind, and we all stopped ourselves from thinking critical thoughts of L. Ron Hubbard. We really didn't do him much of a favor because he really was human in every way.

S: Yes. Do you feel that the mindset of the group of -- all of the adoration that L. Ron Hubbard received, contributed to his delusion? Or do you feel that he imposed the delusion upon the group? Or do you think it's kind of 50/50?

G: There's no doubt that he was in control. And there's ... we did not control L. Ron Hubbard. And although he could have become the effect of his own lust for control, and his own greed and his own avarice, so he created his sycophants. And the effect of... often of what you create may not be that pleasant so he did create his own prison.

S: Ok. So now you contracted with Omar Garrison, am I correct, to do the writing of this book which you were researching?

G: Yeah, beginning in January, I collected up the materials from the Gilman Hot Springs property.

S: Several boxes of materials.

G: Right.

J: This was in '80 or '81?

G: '80, beginning of '80. And then shortly after that I moved them to Los Angeles and I began to add to them. I travelled around, travelled up and down the west coast and I bought collections, other people's collections of Hubbard materials. I interviewed a number of people, his other living relatives.

J: L. Ron Hubbard, Jr.?

G: Yeah.

J: His ex-wife?

S: Sarah Nordstrom. (sic)

G: No. No, I didn't talk to Sara. I talked to Sara after that project was over.

J: His daughter Alexis?

G: I spoke to her as well some time later. I spoke to his living aunt, living uncle.

J: That was his...

G: Yeah. It was good. Good. And they really saw him for what he was, as well. They knew him in a real manner. They knew that he was a big storyteller.

S: Now, at this time you're going around talking to these people and I presume verifying his various degrees and his education credentials, etc. And you're starting to see holes in these stories, right? At this point, it's still 1980, are you going, whoa. This guy's full of shit. Or are you going, oh, something's wrong here? Or -- I mean I know so many people within the church, despite the fact that these claims and the intros to these books and L. Ron Hubbard's past, you know, and he's been killed three times and come back to life and born of a Virgin Mother or whatever the hell it is, they consider that these things are factual. He was a war hero. He did have these degrees. And that the government with a conspiracy against Scientology has gone in an altered all this information. Do you know what I mean? It's like, to continue their own delusion of what was what.

Now, at this point in 1980 were you still buying the story or would you concerned, you know, in terms of the validity of any of that?

G: There were a couple of steps in the process. Initially, I just collected the documents. Then I began to see discrepancies. And although I saw discrepancies I continued to believe that what he was writing about himself and what he had been saying was the truth. And that the discrepancies could be explained in some manner. Additionally, if there are only a couple of discrepancies and they're minor discrepancies, who cares. But, through the process of the accumulation of the biographic archive, in my study of them, I began to see that it wasn't just a few isolated instances but, rather, that he had -- that lying had been his pattern and that that's what was true about him. What was true about him was that he was a liar and that he appeared to think that he could lie with impunity.

J: What lies did you see specifically that you could enumerate a few.

G: The ones which were significant to me were the ones I think which had been used to draw me into the organization and which had kept me in the organization for all that time, and they were not just used for that but used to create a mystic about him which you could not penetrate, could not question. It was significant ones. If he had been crippled and blinded during the 2nd World War. That he had cured himself with Dianetics. That it was a matter of medical record that he'd twice been pronounced dead. That he was a nuclear physicist. Those, to me, significant representations, I was able to show in his own documents, not the government's documents, but documents which he maintained in his own archive, that they were false.

J: Gerry, how did you feel when this came to light? I mean, you're a loyal Sea Org member. You have worked for the last ten years as a Sea Org member working night and day very hard, giving your all, complete dedication, sometimes 16, 18, 20 hours a day. How did you feel when you began to find these things out and they began to dawn on you that this man

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was a bigger liar than he was a purveyor a truth? This must have been the devastating thing to go through. You were loyal. There was probably no person any more loyal than you. You were one of the loyal Sea Org members.

G: Well, it was initially like I say, I just noted the discrepancies and carried on with my work. There came a time when my mind began to open. I began to see, and I began to question. That period of time was also a period of great confusion. There was also a period of time of some loneliness because there really was no one to talk to because I couldn't go to someone with a critical thought. I could not -- you could not talk and say the things that I had to say inside the organization.

Then there came a period of time in the fall of 1980. I actually had tried a couple of times. I'd gone to Laurel with some discrepancies, cause Laurel had been his public relations officer for many years. She knew the story. And I was saying, "Laurel, this isn't true. We can't say that." Well she got really angry at me and silenced me. So I learned to not say anything.

But there were a couple of points. One of them was contracting with Omar Garrison. And Garrison had a couple of very pro-Scientology books prior to my coming on the scene although he was not a Scientologist..

S: He was a huge ally of the church, in fact ...

G: He was a huge ally so again even with Garrison I couldn't just say, "Hey, Omar, you know, check this out. It's bullshit!"

S: I've connected the dots and it's scary.

G: Right. Now, it was a gradual thing with him, too. I would give him material and then we'd talk about it. Gradually I began to see that Omar understood, and Omar was an ally of mine, so we began to be able to talk freely. And that was another key to my getting out of the organization was... spending a lot of time with him, with his wife, travelling around the country in different situations outside the organization. And then going back into the organization and having that comparison all the time where you do, having the knowledge that I had, going into the organization and seeing the craziness inside and then going out of the organization and seeing that the representations the organization was making about the outside was another aspect of the big lie which was being run on us.

But, toward the end of my existence inside the organization, and also as I learned more I became, I guess, braver and braver and braver. You know, willing to stand up -- it didn't matter any more. You know, you want to kick me out of this organization? See you later.

But I was still there, still dedicated, so I developed something of a cause during my last few months inside the organization of attempting to get the organization -- and, of course, I knew it would get to Hubbard and it was sort of a challenge to him, but initially to get the organization to change what it was saying.

S: I remember that part very well.

G: And I critiqued a number of the dust jacket material and the "About the Author" sections of the various books, and we'd go through them and line by line say, "This isn't true, this isn't true." Here are the facts." This we don't know. We can't document that. It sounds like bullshit to me. And so, I did that with a number of pieces. And I think it actually had a good effect up to a certain point, because they did actually change them and tone down some of the hyperbole.

S: Now, didn't at that point you also feel -- this is per my recollection cause I was a PR at that time and worked pretty close with Laurel and -- didn't you feel that despite the fabrications and despite the inconsistencies that there was still value to Hubbard? I think I recalled something about, "Gerry said that we could still do a biography and just make it truthful and still..." -- because LRH had contributed so much, just do a truthful thing, and his contributions would stand on their own. You didn't need all this fabrication. And you sort of had platformed this campaign, right, where you went over like a pregnant polevaulter...

G: Right.

S: ...as I recall.

G: It really, I think, ran his accomplishments and the technology will have to stand on its own. If it's going to stand, it has to stand on its own. We can't hold it up with lies. That's the way I still feel about it and I think it has fallen on its own. I don't think that it's workable and I think that it's an enforced technology. But that's sometime later in my development.

S: Now, by this time, you and Terry were no longer married and you had remarried to Joyce Brown.

G: Right.

S: Was your relationship with your wife at this time, where you were very vulnerable and feeling alone, was that any solace to you?

G: Yeah. See, she came along in...

S: Another catch, dude. I mean she was such a doll-baby. She is such a doll-baby.

G: Yeah, she's a sweetheart. Initially, I'm working away on the biography project and she's up there in SMI, Scientology Missions International. And we connect. And you know what a Sea Org romance is like, you know. "Hey, gotta a weekend free, let's drive down to Tijuana and get married." You know it's that kind of a thing. I think I drove her down one week and got her a divorce and the next week got her -- married her, sort of.

But she was in much the same situation as I was, in, that, if you're free to talk to anyone inside the organization then, for one thing, the organization wouldn't be Scientology -- if people were free to talk it wouldn't be Scientology because that's the essence of Scientology is its lack of freedom. We at one point came to this realization that we could talk. So, just toward the end of our being inside the organization we formed something of a conspiracy of two. And so, knowing what we knew, and once I knew that I could talk to her and what she knew is she could talk to me, and we formed this little conspiracy...

J: It really wasn't a conspiracy though. It was open, honest communication.

S: Between a husband and wife.

G: Right, open and honest between us, but ....

S: But within the organization it would have been a conspiracy.

G: ...but conspiring to not let the organization know because they say you must talk open and freely to this sec checker but you can't talk open and freely to your spouse.

S: What?

G: That's the organizational paradonn. So we violated that because when it came to sec checking it was -- I mean she had to go through a sec check toward the end of our Sea Org experience and by that time, I mean, once you know that the whole thing is a scam, anybody can con a sec checker, because you have a certain altitude. Go ahead and ask a question. I don't care.

S: That's right.

G: You know, it doesn't read. There's no more belief in that meter. It's just a pack of garbage.

J: Are you saying that the E-Meter is not 100% effective?

G: The E-meter is at best a worthless, anti-religious artifact.

J: Thank you.

S: Don't sugarcoat it honey, give it to us straight, ok? I mean, you know, enough of this pussyfooting around stuff.

J: You feel pretty strongly about that, don't you Jerry?

S: Yeah.

G: No, it's ... irrelevant. It has no meaning. It has no value whatsoever.

J: I think the value that it has is the value that the person holding the cans has...

S: Infuses into it ...

J: Yeah, places upon it because of what he's been told or shown.

G: That's not the value. There may be some value in answering questions. There may be some value of looking into one's mind. And --

J: I agree with what you're saying. I don't disag.. I'm saying the value that it has to the organization, not to the person.

G: Oh, yes. It has the same kind of value that thumbscrews had in another era.

J: Yeah.

S: Now, Gerry, when you had all those documents and you had these boxes, did you not come across a lot of evidence in terms of not only inconsistencies in the fabrications that L. Ron Hubbard had presented to Scientology as a whole, but also things that made his past actually questionable in terms of maybe alcoholism or drug use or things that you came across that not only show him as someone who's made up these things, but showed a quite -- A man who was the antithesis of what had been presented.

G: Yeah. Yeah.

S: Tell us about that.

G: I began to see that his drug of choice in his later years were steroids. And he dosed himself with massive doses of testosterone and I remain convinced that that is what he used to keep an edge on his belligerence.

S: Interesting.

J: How did you come to find that out?

G: From his own writings.

J: Is there any way that we could look at those writings?

G: I don't know of any way of getting to them at this time.

J: Why? I know it's a simple question, but why?

G: Because the organization will not disgorge the true information which it has on Hubbard.

S: Do you think they've kept that information or do you think they've destroyed the information?

G: Both. So that there is certain aspects of what they've done and the criminal activity that they're involved in which they maintain and there're certain aspects of it which they destroy.

J: When you say the criminal activity they're involved in, do you think that the majority of Scientologists have any idea that that's going on?

S: The current Scientologists?

J: Yeah.

G: No.

S: Of course not.

J: Then?

G: When you talk about the majority -- the people at the top know.

J: Like David Miscavige and Norman Starkey and...

G: Yeah, and Gene Ingram? Sure. The people who control Scientology. And the lawyers. Oh, yeah, the Earle Cooleys of the world? Sure. They absolutely know that they're involved in criminal activity designed to destroy civil rights of the members of the organization and the lives of anyone they perceive as enemies.

J: Can you give me two examples of civil rights that Scientology has violated?

G: Freedom of association, freedom of speech, freedom of religion.

S: Just to name a few, honey.

J: Ok. Yeah. I mean, thanks because...

S: Gerry, keep going.

J: That sort of thing I think is important. Most people don't realize that that's what's going on. Most people have no idea that that's going on. Did you feel like you were manipulated while you were in there?

G: While I was in there I don't recall that the subject of manipulation crossed my mind. I don't think I could have allowed myself to think that I was being manipulated. But...

J: Did you ever feel that way?

G: I felt absolutely controlled. But my understanding of the manipulation, the coercion, comes later.

J: After one pulls back and views it from the outside.

G: Yeah, well, I mean, technically I was inside but I had really begun to deprogram myself and so...

J: Did you tie yourself up? I mean we all know about deprogrammings. You get tied up, and ...

S: ... sexually molest yourself.

J: Did you tie yourself up and sexually molest yourself?

G: Oh, I mean, deprogramming has to do with that subject of manipulation. While you're programmed you don't know that you are being manipulated. When you're deprogrammed you realize that you have been manipulated.

J: So in order to be deprogrammed, one has to be programmed.

G: Yeah.

J: Deprogramming doesn't work on somebody who hasn't been programmed.

G: I would think that's true.

J: Yeah. I would think so too. I would think so too.

G: Accepting the word and the definition.

J: When did you leave?

G: December '81.

J: Why?

G: It was time to go. (laughter)

J: Would you tell me a little bit more about that. I mean, I believe what you're saying but not everybody knows the Gerry Armstrong story. And I think a lot of people might be most interested.

G: Ok. Well, I came to the point I guess a couple of weeks prior to that and I had been very vocal on the subject of the lies, Hubbard's lies, the organization's lies and the organization's activities. And my vocalness had come to the attention of Norman Starkey. Norman Starkey at that time was on a mission operated by David Miscavige, the purpose of which was to take care of Hubbard's legal problems so that he could come out of hiding. And Starkey one day came into my area, Hubbard archives area, and we had a conversation. And he accused me of saying things about Hubbard which were untrue. And one of the things he said was, Hubbard -- he wanted, Starkey wanted, to charge the PRs through the ages with creating the lies which I have documented.

S: Well... now hadn't that happened to a large extent? Did Lizzie and Laurel -- for a period of time, I don't know what happened to the whole thing, but they took the fall that they had made it up and they had written these falsehoods about L. Ron Hubbard.

G: But they weren't around in 1950 and 1952 and 1965...

S: No, but they were the ones who -- they had written down the biographical information on L. Ron Hubbard, how it was dictated to them by L. Ron Hubbard, per my recollection.

G: But they were not there. If you look at -- what's the book on the atom bomb, the nuclear physicist's book -- "All About Radiation". If you look at that book and if you look at the bulletins that were written in that era it says, L. Ron Hubbard, a nuclear physicist. Lizzie wasn't there. Laurel wasn't there.

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S: That's true. That's so true.

G: How can you say -- I mean, it's like one thing to make those people scape goats, but those people weren't there in '56. Laurel wasn't old enough to be there in '56. She was in our generation. I mean, you know, we're the 60's. We're the baby boomers.

S: Lizzie certainly wasn't there, either.

G: Anyway, what I did was show Starkey in Hubbard's handwriting where he had called himself a nuclear physicist and Starkey just went silent and he stormed out. And a short time later I was called down to Gilman Hot Springs.

J: Do you think he had a major ARC break?

G: No, I think that he recognized that everything that he had put his life into for so many years and had done so many rotten things and attacked so many people in defense of. That he saw that that hung in the balance and he had to go one way or another. So he chose to close his mind. And he wrote to the ... one of the executives of La Quinta ... Gilman Hot Springs and requested that I be sec checked.

J: This is the Golden Ere Studios, or Golden Era Studios.

G: Right, but at that time -- I'm not sure what it is now.

S: No, cause it's at Gilman's.

G: CMO headquarters...

S: This is at La Quinta.

G: No, this is Gilman.

S: Oh, this is Gilman, ok.

G: Yeah, this is -- CMO headquarters, in any case. And so I went -- I was called to Gilman and I spoke to Cirrus Slepp. And she asked me about -- she actually showed me Starkey's report on me. And I said that I -- you know I was quite open with her.

S: Now Starkey reported that you had fabricated this information?

G: No, Starkey reported that I was criticizing Hubbard and he wanted to find out what I had been saying and what documents I had been giving to Omar Garrison because I'm working closely with Garrison, and if I'm giving Garrison documents showing that L. Ron Hubbard claimed to be a nuclear physicist and L. Ron Hubbard lied about being a nuclear physicist and Starkey knew about many more lies...

J: The cat would be out of the bag.

G: Right. So he wanted -- they wanted to keep a lid on it. Cause his job, of course, is to continue the myth of L. Ron Hubbard. Starkey's put a whole life into doing that. He's dedicated to that illusion.

J: Starkey got into Scientology in the 60's in South Africa. So he's been in a long time, probably 30 years.

G: Yeah

J: That's a long time to put in. It's at that point 20 years.

G: Right. And he was in a position of power. And he liked those positions of power. And this is, of course, some kind of a threat. I mean, here's just some guy down there making all kinds of noise and essentially calling L. Ron Hubbard a liar.

J: You know, one of things that always... I'd always thought about in Scientology was the is-ness, as-is-ness, alter-is-ness and not-is-ness. It says in order for something to survive or continue there has to be a lie in it. And the question that always came to my mind -- the first question that always came to my mind is, for Scientology to continue it must have a lie because it says so right here. In order for anything to continue it has to have a lie. So I always wondered what the lie in Scientology was.

G: The lie is that is Hubbard's philosophy. Hubbard's philosophy is flawed. It is a corrupt, dishonest philosophy. And he was a corrupt and dishonest man.

J: You must hate his guts. You must hate his guts for a person who's ... for a person who's been loyal...

G: That which will survive is that which can never be altered. That which is altered and that which is hence unreal, that which is a lie, will not persist. Now you can try and Hubbard can try but you will not get lies to persist.

J: That's true because there's always some truth under there and they'll pull the truth out and it's fixed full of lies.

G: The truth will be there no matter what you do with it.

J: We need to go eat lunch, or dinner?

G: Oh, ok.

J: So I think that you have an appointment.

G: Yeah.

J: Before we do that, let me ask you two quick questions.

G: Ok.

J: You left in '81.

G: Right.

J: You were sued in '84.

G: '82.

J: '82.

S: Jerry?

J: It went to trial in '84.

G: Right.

S: We should just pick this up, because...

J: We will.

S: Ok, I just wanted ...

J: We will. But, I just want to get this on here. They lost the suit against you.

G: Right.

J: In '86.

S: Big time.

J: In '86. They sued you in '82. Went to trial in '84. In '86 they settled out of court with you.

G: Right.

J: For hundreds of thousands of dollars, if my sources are correct, and you don't need to verify ... or hints at all, if you can let us -- if you want to, it's fine. But there's no reason to give anything. If my sources have been correct you got $800,000. You -- Scientology paid you $800,000 because you knew the truth about L. Ron Hubbard. You knew the truth. And you have been harrassed and you've followed. You've been lied about. You've had people watch you 24 hours a day for weeks on end. You've had to go through extreme mental pressure today, yesterday, even. Gene Ingram says things to you like, "Gosh, Gerry, you look like you have AIDS," when in fact you're a very healthy person and you're a marathon runner. And it's...

G: Right.

J: Settlement aside, but, these other things are correct.

G: Right.

J: These guys are still harrassing you.

G: Right.

J: And you were a loyal, loyal, Sea Org member. Never in your wildest dreams did you think, when you got into Scientology, and you dedicated your life to this, if ever they had put you in this position.

G: Right.

J: Thanks. Can we continue this?

G: Yeah.

J: Thanks.

G: Thank you.

[RESUME TAPING]

S: Hi Gerry, you left in '81.

G: Right, December '81.

S: Can you tell me what led up to your departure from Scientology?

G: Sure. I had come to the conclusion at the end of '81 that the organization was not going to reform its ways, it was not going to correct the lies L. Ron Hubbard had told about himself. L. Ron Hubbard was not going to correct the lies he'd been telling about himself. The organization was not going to change its -- what I considered -- criminal and anti-social behavior. And I knew that my days were numbered, that I could not continue to be in the organization taking the stand that I had been taking, being vocal on the subject of Hubbard's lies. So I really was faced with only one choice to make and that was to leave. So, I carefully, cautiously, and over a period of a week or ten days removed my few belongings and my wife's few belongings out of the building and we cleaned our living space before we left. Left the few pieces of Sea Org uniform that I had, and we drove away.

S: I see. Now didn't you at this time do something rather brazen which is like -- didn't you keep some of the documentation for some period of time and send copies to the church or vice versa kept copies and sent stuff back to the church?

G: No.

S: No?

G: No, I didn't. I worked very diligently and my wife Joyce -- and Jocyln -- worked very diligently for the last couple of weeks copying whatever we could copy of the documents which I had in archives, many of which I had already copied and already provided to Omar Garrison, but I was dedicated to Garrison. I sensed, or knew, that whoever took over the biography project after I left, and I assumed that it was going to be Vaughn Young, because he'd been working with me on the project at that time and it was my expectation that he was going to take over the project, that the organization once I left would not allow Garrison the access to the materials that I had so my dedication to him, my dedication to the biography project and my dedication to the attempt to bring to light the truth brought me to copy everything I could, and what I couldn't copy and all the copies that I had remaining, I took to Garrison at the end. So I provided them to Garrison and then Joyce and I drove up to Canada. And at that time we were completely documentless. I did not have any documents. Didn't do anything with the documents for a period of time.

There came a time some months later because I began to work for Garrison outside the organization that I, at his request, copied a lot of the copies which I had given to him because he wanted to set up a separate archives because he felt that the organization was going to burglarize his place and steal the materials that I had provided to him.

So, that second set of materials was what I then provided to Mike Flynn, or sent to Mike Flynn, after I knew that the war with the organization had started, in the spring of 1982.

So, the organization's claim that I stole all these documents -- that's simply not true. I was under contract to provide the documents that I could to Garrison and I performed pursuant to that contract. It was only as a result of the organization's declaring me an enemy -- I knew that I was then fair game. I knew that the battle had been engaged. And I took it as what was the only sane thing to do. Anticipating a legal battle. In fact I was told to get a lawyer. I did.

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I got Mike Flynn.

S: Okay. And so, then, how did it progress from that point, the legal battle?

G: Through the spring of '80 -- late spring of '82 and into the summer I provided sets of documents as I was able to get them from Garrison and copy them. I sent them to Mike Flynn. Some of the documents that I sent were some of the originals which I had provided to Garrison.

Some of the originals I provided to Garrison because he needed, or, we felt, that it was very good to have originals because he was considering including copies, photographs of the original documents in the biography, some of the things which were in Hubbard's handwriting and on the original paper would have been great included in the biography. So some of them he had for that reason. Some of them he had because I just didn't have time to copy them. It was our intention that Garrison would copy them and he'd provide -- give the originals back to the organization.

But some of the documents were originals, but most of them were copies which I provided to Flynn.

S: Now up to this point Mr. Garrison had been, as you'd stated before, an ally of the church. And Did he also -- was he becoming disillusioned with all this newly discovered information?

G: I think he was -- he wasn't probably as illusioned as I thought he was. He really was an intelligent man living on the outside of Scientology, and had provided as a writer a service for them in doing the books that he'd done. But he thought his own thoughts and he was independent of Scientology. And he is a -- he's a fighter in his own way, so he had already had his own battles with Scientology just to arrive at the products that he'd done.

So it came to him as really no surprise. And It was a surprise to me that it was no surprise to him. He was pretty real about the whole thing. But, he did begin to understand that he had possession of very sensitive documents and that the organization would then consider him, if not an enemy, certainly a major security threat in that he possessed these very sensitive documents.

S: Okay. So, you went to court. The Church filed suit against you, am I correct?

G: Yeah. August '82.

S: You countersued.

G: Right.

S: This was a big suit. I mean this was well covered in the LA Times. This was like a very big, visible suit. Can you tell me how that progressed and what the outcome was? And who all was involved?

G: Sure. They sued me in August of 1982 seeking to recover the documents which I had sent to Mike Flynn, and seeking damages. And the causes of action were conversion. They considered that my providing -- initially they claimed that my providing the documents to Omar Garrison was conversion because they did not know at that point that I had retained a copy of the contract to show that Garrison legitimately had the documents and that I legitimately had given Garrison the documents.

I defended the suit initially by stating that the documents were not the organization's documents but were L. Ron Hubbard's documents and L. Ron Hubbard should bring the lawsuit but L. Ron Hubbard would not come out of hiding, and he was afraid to come into court. So then Mary Sue Hubbard intervened on his behalf. And she claimed a proprietary interest in the documents.

That was the initial stage of the lawsuit. The judge in Superior Court -- I think it was Judge Coale, then ordered the documents which I had provided to Mike Flynn and to my other lawyers Contos and Bunch in Woodland Hills -- he ordered those documents be delivered to the court and they stayed within the possession of the court through the lawsuit, through the pendency of the lawsuit up until the time of settlement which was December 1986.

So, they initially sued me, and then I filed a counterclaim for the intentional infliction of emotional distress and for fraud. That then, the two cases were bifurcated -- they were split apart so that initially all that got tried at my trial, at the Breckenridge trial in the spring of 1984 was their lawsuit against me. And out of that came the famous Breckenridge decision in which he found that because of my knowledge of fair game, of organization intelligence operations and of the fraud of L. Ron Hubbard that I was justified in going to Garrison, getting the documents that I knew about and sending them to my lawyer. So ... That was the result of that trial.

My case against them...

S: Was that a jury trial?

G: No, judge trial. My case against them did not go to trial because that was settled. It was scheduled to go to trial. At one time in December of '86, then in early 1987. And in large part because it was scheduled to go to trial the organization settled it.

S: Now I know a lot of other executives at the time sort of -- I wouldn't say rallied around you, but, but, came to witness against the Church during this time.

G: Right.

S: And that was a big thing at the time, right, because these were some of the senior most executives of the church.

G: Uh huh. Laurel Sullivan who'd been Hubbard's public relations officer whose history went back with him through the Sea Org. Bill -- sorry, Bill Franks wasn't there. Homer Schomer. Eddie Walters.

S: Kima, didn't Kima..

G: Kima testified. Nancy Dincalci. So a number of them were, really my friends. People who I'd known inside the organization and outside the organization. A group of friends who were quite close to me and who had the courage to come forward and testify.

S: That's great. Now, your suit settled and -- bring us up to date to this point as well as how you feel retrospectively about the whole situation, what, you know, what would like to do now, are you under a gag order presently? Are you not?

G: I'll give you the history.

S: Ok.

G: So in, From 1984 after the Breckenridge decision there were a series of events -- operations that the organization mounted against me to compromise me, to set me up, to get me charged with false criminal charges, any number of things. The onslaught...

S: 1984, that was during the trial -- during your case or prior to your case or after your case?

G: They began before -- in 1982 they had PIs on me, I was assaulted, I was driven into. They tried to get me in a highway accident. They harrassed me day and night for well over a month. Then as a result of the court's comment about this kind of activity, they backed off. They kept up the legal onslaught and they deposed me in any number of cases and within my own case. And they ran operations against me. You okay?

S: Yeah.

G: But it was really after my trial in 1984 when they escalated the war. They sent around my friend Dan Sherman. You may know him. And I liked Dan. We were really close. And we hung out a lot. But the whole thing was an operation to get Dan close to me so that I could be set up. And what they tried to do through Dan was to convey to me the idea that there was a group of people inside the organization who wanted to reform it, who wanted to get rid of the criminal element at the top of the organization and have it revert to its pre-Guardian's Office, pre-criminal days. Get rid of the criminality.

S: Now, so at this point, were you supportive of that effort, on Danny's part?

G: Well, at first all it was was him telling me that there was this group of people and then he would send me messages from them. And then gradually I built up a relationship with them. These people claimed to be a core group of 35 people inside the organization who were working covertly because of their fear that should it become known that they wanted to reform the organization they said they were afraid for their lives.

S: So at this point despite everything you knew about Hubbard you must have had some faith in the technology of Scientology. Or am I wrong? Am I mistaken? I mean if you thought well we can restore this organization to its original intention to be, you know, this may be humanitarian group or maybe this ...

GA: No. No, it's more like downstairs here there could be any number of Catholics, Protestants, Jews or whatever, but I support the cause that they're involved in. It's that sort of way. I did not consider myself a Scientologist, but, if Scientologists want to continue to be Scientologists and at the same time clean up the criminal element in the organization I can support that without myself being a Scientologist. So I supported their intention of reforming the organization. And I didn't know who they were. I'd never spoken to them so it was sort of a support from a distance -- there was nothing to do. He was relaying this information to me.

Then they initiated a dialogue with me. They wanted to communicate with me. And they would send messages via Dan, the message that they really respected me for what I did, the integrity that I showed during the trial, and so on. I got a phone call one night from one of these guys just after the trial and just the day before I was to fly to London to testify in the child custody case, the one that Jolly West quoted from today, the Latey decision came out of that trial. I went over there and testified. Well the night before I received a telephone call from one of these people claiming to be one of the 35 Loyalists. And he said, "We can get your pc folders. We know you want your pc folders. We can get them for you." "Oh, ok. What do I have to do?" "Oh, well you'll have to drive to a certain place in Los Angeles..."

S: Griffith Park.

G: No, this was a different -- I never went, I never bit. I never rose to the bait on that occasion. I said, "Well, to me this could be construed as accepting stolen property and it also could be an attempt to get ... to stop me, because of the times that were involved, to stop me from flying to London, cause they did not want me testifying in the trial. I said, "As much as I'd like the pc folders I can't do it." In any case I flew to London and testified. There, in London, I was harrassed at Heathrow Airport by private investigators. And they, in fact, wrote sworn affidavits that I was observed passing sealed documents to a bearded Arab in the Old Cock Tavern, pardon me, on a particular Tuesday night. I had in fact been at the Old Cock Tavern for lunch on the day previous but I was not there now on a Tuesday night. And the whole thing was concocted, but that's true to form of Scientology, you know, manufacture evidence. So they ... a Scientology operative will swear to anything. The fact that it's a sworn affidavit doesn't mean anything. But it was just another piece of the ongoing operation to compromise and set me up.

I returned to the U.S. and then I was contacted by two people. One of them was David Kluge, who I only knew at that time as Joey. And the other one was Mike Rinder, who I'd known from inside the organization in the Sea Org. And both of them -- and all of this was video taped, illegally, covertly, by Gene Ingram. And I didn't know at the time and I talked to them like I ...

S: This was the meeting in the park.

G: Right.

S: The famous meeting in the park.

G: Right. And there were a series of meetings in the park but I talked to them like I talk to you and I -- you know my language was atrocious. I made bad jokes. Just rotten. I had a foul mouth at the time. But I was also -- you know, I mean, I could pick up that there was something weird going on because what they would tell me off camera seemed to be so different from the questions that they're now we're sitting on a park bench and they're talking to me. And I'm ... was completely open about the whole thing, but I also knew that there was something weird about it so a lot of what I'm saying on the video tape reflects that aspect of the thoughts that are going through my mind about how strange this is.

But there are some really funny things that occurred. If you've never seen the videos, they're very, very funny.

S: You know, I on't know, Gerry, that the videos were ever shown. What I do know is that a transcript of these meetings was published in Freedom News Journal.

G: Right. A part, part of it.

S: In part. But it was very interestingly written because it would say -- it would have a quote and it might be a sentence, and then it would say, "And then he said..." and the rest was all just like editorialized, "And then he said this and this and de-de-de-de-de-de-de-de." And then there'll be another quote. And I thought, "Well, if he said these things why didn't you just publish the dialogue? Why are you giving me your interpretation of what he actually said?"

J: True to form.

S: Of course. It amused me. I was still involved in Scientology. Still a believer. I saw this. I have to tell you, this shook me, cause I went, "This is nuts." Who could ever believe this article? And I was truly, truly committed to the organization at this point. But it really made me go, "Please, this so discredits them. Why would they do this this way?"

G: When they first broke the videos in 1985 up in the Christofferson trial, before they were shown to the jury the judge viewed the first two videos. And he viewed them in his chambers, then he came back out and he said, "These are very damaging, damaging to the church." Right. And they polled the jury after the trial. And they said that the video tapes of me only proved one thing. And that was that fair game was alive and well in 1985.

So, the Scientologists are so blinded. Here's the way I think it went down. People are reporting to Hubbard through this time that they have an intelligence connection to Armstrong. And Hubbard hates Armstrong, you know, cause I've been saying all these things. And they've been telling him that I took the documents.

S: Pull back the curtain.

G: I mean, out of what I did came the Breckenridge decision which stated, "This guy is a paranoid, schizophrenic." I mean just the worst thing that he ever wanted to hear. But true.

But they -- the organization could never tell Hubbard the truth. And Hubbard could never hear the truth, so there's a perfect situation there for Hubbard to get partial truth and it always happened inside the organization, then he would issue an order. He would issue an order, in this case, like, "Get that into evidence. That'll destroy Armstrong." Because they're telling him, "We've got video tapes of Armstrong saying 'this,' and of course, they take one line out of context." But that's the big win that they want to convey uplines to Hubbard.

And of course, Hubbard doesn't get the whole picture, but now he has issued an order. And now they have to jump through the hoops to get those video tapes -- illegally taken, and the judge stated up in Oregon, these things are illegal. But they fought to get them in. And after the judge said they're damaging against the church, does anyone care? I had to go through the incredible embarrassment of my foul mouth, and I didn't know, you know, did I pick my nose, you know -- how did I? You know there's four hours of video tape I was just -- I was a total jerk.

S: (Laughter)

G: But I understood after a while I really -- it was terrible to me. Up in the Christofferson trial. When I knew that my friend, Dan Sherman had set me up, that the whole thing was a set-up, that they'd video-taped all of this stuff, the betrayal was so awful to me. I was suicidal for just days. I walked out of the courtroom. The judge got rid of the jury, sent everyone home, and he was busy watching these things in there. And I'm sitting, I'm alone out there in the courtroom for an hour and then someone, one of the Scinos' lawyers walked in and made some complaint about me even staying in the courtroom and so I walked outside.

And we were on the third floor of the courthouse. And there was, you know, the stairs came up like this onto the third floor and then they went around like that so there were two places where you could look down three floors onto the marble floor below. It looked just hard enough that it would do the job, just smack! I really considered it for a long time. I walked over to the railing of one of these areas and I looked down, and I was just contemplating just ending it right there. Then I realized that down below was a set of pay phones and that, you know, someone crossed over there to the payphone and I realized, you know, here I go to end it all and I take some innocent guy out walking to the payphones, so I couldn't do that so I walked over to the other one, thinking well, you know, here's an opportunity. And there was a bank of Coke machines. And so, you know, just out to save some other poor guy, I didn't take my own life at the time.

But it was horrible. I just ... I came just so close. And I... My heart -- there was incredible pain. One night I just couldn't sleep and there was this pain and I just couldn't breathe. Awful! It went on for some days over a weekend and then into the next week. I think they had me on the stand for 10 days, 7 or 8 of which were cross-examination with the great Earle the pearl Cooley. Anyway ...

So that's what happened in 1985 and they just continued after that. Then they culled my pc folders. And they sent all the most scurrilous stuff out of my pc folders. And they put that ... filed the stuff in my case in LA Superior Court.

S: Well, you had to have of known that that was going to happen.

G: Well, I mean, you get a sense but you really can't believe it until you see it. And then you can't believe the twists that they and their lawyers put on it. You know and there was this dream I had. I had a dream up in Portland in '85 and I sent it... I've had very few memorable dreams in my life and only one or two of them have I ever written down. And this one was so vivid and so memorable that I wrote it down. And I wrote it, I think, very concisely. It was some of my very best literature because it is really tight and really good. It's also really foul. The language and the concepts are just grotesque. But it was a great dream. And I sent it to Dan Sherman because he's my literary buddy. It ends up the Scinos get it and they got that! And they want to put that into evidence in the ... the Christofferson trial!

That one, that one followed me this last year it showed up in Johannesburg in South Africa. The organization provided it to their lawyers over there to attack me with. A dream! And they twisted that -- that the fact that I had a dream was the proof of what a perverse, distorted guy I was. Anyway...

So, there was a series of things. When I first arrived in Boston, in September of '85, well October '85, they brought criminal, they attempted to bring criminal charges against me with the FBI for impersonating an FBI officer. Five times they brought either flat out criminal, or quasi-criminal contempt charges against me. And they tried the same thing in Marin County.

S: Gerry, let me stop you here for a minute. What motivates you. I mean, why on earth wouldn't you say, "I did this. I messed up. I made a wrong choice. I'm just going to go away now. And have my life and just ... you know, I have my wife and I have our birds or..." whatever you guys had at the time. I don't remember. I used to get Christmas cards from you guys -- I think you had birds or cats or something.

G: Yeah! We had birds. That little guy could talk.

S: Nicky?

G: Mikey.

S: Mikey.

G: Right!

S: That's right.

G: Anyway, there was a period of time, December '86. It was the time of the settlement. And we'll get back to the settlement in a minute.

I felt that I really could get on with my life. And I could do a number of other things. I began to, I mean I'd always written, but I wrote seriously. I drew seriously. I spent a lot of time doing my things. I had my own life. And I maintained communication with my friends you know, who I did not disconnect as a result of the settlement. The organization may have felt that I should have or had to or that I was contracted to but I didn't do that. But I really had my own life and I wasn't involved in anyone's litigation. And I didn't have to do anything about them for a period of time.

But the organization couldn't quit. They couldn't let the Breckenridge decision stand. They couldn't let my image stand, whatever I represented to them so they continued their attack. They continued in a false -- what they call a Dead Agent pack that they put out against Bent Corydon in 1987. They did it in the Russell Miller case, in London in 1987. They filed 8 absolutely false, scurrilous affidavits regarding me, specific to me in that case.

S: And this was post-settlement agreement.

G: Post-settlement agreement. Gene Ingram provided an edited version of the video tapes -- the illegal video tapes to the London Sunday Times.

S: Now let me ask you something? In this settlement agreement, does it clearly state that this was not allowed? In the settlement agreement? I mean, were they thus in violation of the settlement agreement?

G: In my opinion, yes! Because the settlement agreement, unless it worked two ways, didn't work at all. But if it was only one-way, then they relieved me of any duty to perform by their doing that. In other words, they cannot -- if the settlement agreement is only a lop-sided, one-sided settlement agreement, that's fine! I honor it and I'm silent. And I don't do anything to violate it. Then everything works fine as long as they don't. But as soon as they, in a new, as they would say, unit of time do something, I clearly have the constitutional right to respond and speak out. They waived the right. They had to remain silent whether it said they had to remain silent or not. Additionally --

S: Did it say? That they did? I mean, was it one of those agreements that Okay, we're just going to both let by-gones be by-gones?

G: That's exactly the words in it, yes! Anyone would interpret it that way. And anyone did. But they interpret it by saying --

S: You should let bygones be bygones and get over it but they didn't have to.

G: Not only that! That they have a right to say whatever they want and I must remain silent even if they can say that I was an ax murderer. And I must remain silent? It doesn't work. But not only that, I realized that my silence was in fact an obstruction of justice. Because all of those people who depended on my testimony, and I have great testimony regarding the fraud of Scientology, was vital to anyone who'd been defrauded by Scientology. So I felt that I really have a right and a duty now to stand up to the organization. I did not --

S: So you were feeling like you were getting over it and you wanted to leave it alone and you wanted to get ahold of your life, for a period of time until they began to lash out at you, at which point you said, "Hey, I don't need to lay down, for you to run over me."

G: Well, there was a series of -- even though they published the Corydon Dead Agent pack, even though they published the material in the Russell Miller case in 1987, shortly after the settlement agreement, I didn't do anything. And I didn't do anything until I got a series of telephone calls from Larry Heller, organization attorney threatening me with law -- with being sued if I were to even testify pursuant to a subpoena. So I knew at this point, "This has gone too far." And what happened was I was subpoena'd to testify in a deposition in the Bent Corydon case. Toby Plevin subpoenaed me. Now I had maintained some communication with Bent because he is my friend. I had not assisted him in any way in his litigation because I had agreed not to do that but I knew that if he subpoenaed me, that that was senior to whatever settlement agreement existed.

Another aspect of the settlement agreement that you should know, was that I was told before signing it by my lawyer, Mike Flynn, that it was "not worth the paper it's printed on. You do not have to obey this. It cannot be enforced." So I signed in large part because Mike Flynn said that.

Now, in addition to that, Mike Flynn had told me through time -- and I had grown to understand that 1) the organization had attempted to assassinate him 2) it had destroyed his marriage and 3) he had to get out of the litigation for those reasons. So I was faced with, if I don't sign, then all of these other people don't get to settle, my lawyer can't get out of the litigation, it's going to go on forever, and in addition to that, I've been told by my own lawyer it's unenforceable, it's not worth the paper it's printed on. So sure, I'll go ahead and sign this thing and I will even attempt to honor it knowing that the only hope for a settlement with that organization is if they do change their spots if they do indeed turn over a new leaf, and if they do indeed repudiate fair game. They haven't done it. Hence we now are again locked in battle.

S: Now what is your present litigation with the Church of Scientology?

G: They brought a lawsuit to attempt to enforce the settlement agreement. Out of it ... in May of this last year, there was a hearing here in Los Angeles, in Superior Court, in front of Judge Sohigian. The organization claims that they got a great big win out of it and that I am enjoined pursuant to the settlement agreement. Not true! Judge specifically said that he would not enforce the settlement agreement other than one very narrow issue. The very narrow issue is that I cannot except pursuant to a subpoena, assist someone intending to file a claim or pressing a claim against the organization. Now that we are appealing even that narrow ruling, because that's unenforceable because if you construe that my... that this video could possibly indirectly help someone in the future, I can't do this. And not only that but if you consider that my existence indirectly or directly helps someone, then I am obliged to take my own life. In other words then I must stop breathing. It's unenforceable hence I feel that I am completely at liberty to associate with whomever I want, to talk to whomever I want, and I act in life that way.

And that is in part why I am here at this event now, why I came to the CAN Conference.

S: OK, so what are your further plans? I mean, you're doing great, now. You've got this luxurious long hair.

G: I want to run a 236 marathon.

S: 236 what? 236 yards?

G: 2 hour and 36 minutes marathon. And I want to..

S: That's what you do, you run.

G: I run. So I want to do that. And I want to end the litigation and I want, you know, peace for everyone. I want to reform the economic system of the world and that's mainly it. I don't have any designs on the U.S. presidency.

S: Presently.

G: No, I can't have, I'm Canadian.

S: Oh, That's right.

G: OK are we done here?

End of Tape.

2024

December 22, 1992

David Miscavige and all other individuals who participate in the control of Scientology
C/O Laurie J. Bartilson, Esquire
Bowles & Moxon
6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

Re: Nothling v. Scientology

Dear David and all others involved:

I am writing this to you, and the various copy recipients listed below, because there are certain things it is fair that you know. Although it is the trial in the Nothling case, which, I understand, is set for early February, that has moved me to write at this time, the idea of writing has made addressing a number of other subjects also timely.

You will recall that in June of 1991 when Malcolm Nothling called me and asked me to testify in his case in Johannesburg I wrote to the organization via Eric Lieberman to see if by initiating communication on the subject you might see that there was an answer to your litigation problems different from the one you and your erstwhile leader had been believing in and pursuing as long as any of us can remember.

Mr. Lieberman wrote back, essentially advising me you said stick it in my ear, and that more, not less litigation was going to be the same old solution; and to not expect communication other than the solidest of sorts. Copies of Mr. Lieberman's and my letters are enclosed herewith.

I did travel to South Africa in 1991 to testify, as you know, but the trial was postponed on the organization's motion. Now it's set to happen again. Again Mr. Nothling has asked me to testify, again I have agreed, and again I am writing you to see if there is any sense in attempting to unfoment this litigation.

Your public attack line that Gerald Armstrong foments litigation against you is particularly hurtful because of what I have done and continue to do to unfoment litigation. Even my signing of your settlement agreement was, in the face of your intent to hurt me, which fact is settled by the agreement itself, an act only of unfomentation.

You all should take a good hard look at the hurt your practices, certainly your litigation practices, cause in the world. And you don't have to desist in them because of anything I've said. You can knock off those bad practices for any reason you want, including because they don't work and make no sense.

All the decent people, believe me, in your organization want you to get out of the stupid attack-the-attacker business, and they'd salute you for getting the organization out of that silliness, but they're too frightened. You shouldn't frighten good people that way. It's cruel. And any thinking soul knows that you guys are only acting out of fear, so you really are not fooling anyone with your blindness and bluster.

I realize you've put your faith in really bad things, like lies and PR, threats and bullying, and really mean people, like Gene Ingram. And I'm aware that having put your faith in badness for so long, and spent so many millions of dollars to have so many bad lawyers make so many bad decisions and add so much to their brethren's bad name, it can seem impossible to quit. But you must. All it will take is the willingness to unfoment your litigation.

Eugene M. Ingram has done such nasty things to so many people in the service of your organization, you and he should be spanked. His terrible charge at the CAN convention that I have AIDS is heartbreaking, not because I have AIDS, which I don't, but because your pet pit viper personalizes and focuses your organization's institutionalized hatred.

By accusing me of having AIDS, you and Ingram attack not just me, you attack the many people whose lives have been touched by this disease, or for that matter touched by your organization, and you attack yourself. Your similar-veined attacks on other people of good will at the CAN conference, like Father Kent Burtner, has brought your organization to ignomy.

But the target of faith can be rechosen. And that is where I urge sense and unfomentation. Put your faith in what is real, what is true, what can always be depended on. Put your faith in what in people is true, unchanging and ceaselessly loving. Putting your faith in lies, PR, threats, bullying and bullies you will always betray yourself because you put your faith in nothing; and you and every being everywhere have a right to everything that nothing isn't.

Likewise don't put your faith in litigation or your use of the courts to harass. It is possible to be faithful to a higher ideal than wins in court. If you have put your faith in lies, leverage, advantage and bullying to secure a win, you have gained nothing. If you put your faith in truth, hope, charity, love, no matter the courtroom outcome you have everything; that's religion.

Since the 1991 almost trial in the Nothling case the California Court of Appeal issued its opinion in the appeal you took from the Breckenridge decision in Armstrong I, the California Supreme Court denied review, and the Court of Appeal denied your motion to seal the appellate record. You brought and lost the motion to enforce the settlement agreement before Judge Geernaert in Armstrong I, and then you sued me to enforce it in Armstrong II.

In May Judge Sohigian issued his ruling refusing to enforce the agreement, although enjoining me from testifying unless pursuant to a subpoena. He also ruled that I did not have to not make myself amenable to service of process. I will supply a copy of the Breckenridge decision, the Armstrong opinion and the Sohigian injunction to any of the recipients of this letter upon request.

Because you didn't appeal from the Sohigian injunction, you have accepted it. I believe as well that for a valueless desire for a valueless win at any cost you also accepted his dicta; e.g. "involves abusing people who are weak," "involves techniques of coercion," "a very, very substantial deviation between [your] conduct and standards of ordinary, courteous conduct and standards of ordinary, honest behavior," "be sure you cut the deck," "make sure to count all the chips."

As a result, I consider myself free to do anything anyone can, except testify absent a subpoena. Much of what I am permitted do I am going to do. I am going to write freely, speak freely, publish, talk to the media, associate freely, and continue, until you put your faith in something more religious than what is bad in jurisprudence, to confront the injustice you bring to court.

In the next month or so I expect to initiate speaking or media events to help pay the enormous costs of this litigation. And I expect to promote my legal position within the publishing industry, because my story and my writings on the subject are literarily and commercially worthy.

I will continue to associate with and befriend all those people I consider you attack unjustly and senselessly. I will make my knowledge and support available to the Cult Awareness Network, a group of people of good will you vilify, in all the litigation you have fomented against them. I will make my knowledge and support available to any Scientologist who is afraid to go anywhere else for understanding, and to the families of Scientologists your organization has estranged. I will even make my knowledge and support available to entities like Time and people like Rich Behar in their defenses from your attacks.

I will, nevertheless, remain available to do whatever I can to unfoment your litigation. I will meet with you, talk with you, help you to find a better solution to your problems. Because of your decision to not have anyone communicate with me, no one from your organization has. I get a little lawyer contact, lots of PI BS, an OSA hearing or deposition attender, enough psychic skirmishes for an army, but, for the life of me, no real people.

In 1991, fantastically, I was the only person in the world, other than Malcolm Nothling himself, who was willing to testify at his trial. And that was enough reason to go. In February 1993, although at this trial I probably won't be the only person willing to testify, there will still be ample reasons to go, unless the case can be resolved.

I really would rather there was no trial and I really would rather not go. Lord knows this last period has been overwhelming and the litigation behemoth terrifying; and Lord knows I have my own calling, which has nothing to do with your legal problems. So I'm willing to do a lot to unfoment the Nothling litigation, and all the tangled legal webs you've woven. But I sure can't do much if you continue to see legal warfare as the solution to your problems and continue to pay the millions your legal mercenaries say the warfare costs.

I am aware that with enough money to enough lawyers you, the leaders of your organization, can hide yourselves and make your roles in your trumped-up war seem very important. There is no doubt this is desirable, it just isn't fair. The real purpose of your little war is to facilitate your doing something different from Scientology, while all those whom you control must go through the daily grind you say you're above.

I don't fault you for doing something different from Scientology, but I do not find acceptable your holding Scientologists in bondage to your catastrophic cause, enforcing your lie that you have their best interests in mind, robbing their years of youth and vigor, and putting them at risk while you show up at the occasional ribbon cutting ceremony, lunch with lawyers and the like, sucker celebs, run PIs and intel ops, conspire, cheat, lie, steal, bully and destroy. I urge something more creative as a better idea.

Your hardworking staff members and people of good will around the world who have supported you financially and spiritually will not for much longer be fooled by your foolishness and will stop believing your lies. They will speak to each other, they will speak out against your suppression, and they will act to free themselves and their friends. You cannot much longer, as we move societally into the age of wisdom, cynically and sillily intimidate good people with threat and suppress good people with lies.

There is the matter of mitigation of damages which, because you insist your lawyers tell you what you pay them to say, you may not have heard or yet understood. In that by the Sohigian ruling I am permitted to speak freely, write freely, publish freely, associate freely, when, it could be argued, and you have, that prior to the ruling and pursuant to the settlement agreement I was not so permitted, I have, in your attempt to enforce the agreement, prevailed.

By not appealing the Sohigian ruling you have acquiesced thereto. I am therefore due costs and fees in Armstrong II plus the costs and fees you already owe in your earlier losing and unappealed effort in Armstrong I. But in addition to the fees and costs now owing, and increasing as you protract this already lost litigation, there is the cumulative effect of your legal onslaught which, continuing after the case was lost, if not before, is in every minute malicious.

Gerald Armstrong and The Gerald Armstrong Corporation (TGAC) must also mitigate their damages. I have a duty, therefore, to end this litigation as quickly as possible. Thus I write to so many organizational recipients; thus I canvass to see if within the organization's many parts, all put at risk by their leaders' asininity and mean-spiritedness, there are people of good will who will see sense in what is in their best interest.

That after the Sohigian ruling you sued TGAC (pronounce that Tee-Gee-Ack) is silly and self-destructive. The only thing in the world Gerald Armstrong, individual, is prohibited from doing by the "injunction," is testifying about his Scientology history and knowledge without first accepting the perfunctory subpoena. TGAC only came into existence in 1987, six years after Gerald Armstrong's organization experiences ended, and a year after the Armstrong I litigation "settled."

TGAC cannot testify, with or without subpoena, about any Scientology experiences, because it has had, aside from those which have flowed from your lawsuit, none. Since no one, including TGAC, is prohibited by Sohigian from doing any of the things TGAC actually is capable of doing, it is free to do everything anyone or any other corporation can; and by not appealing the injunction you have so agreed. Thus, having no conceivably legitimate claim against TGAC, you depend on one manufactured from madness, and you must therefore dismiss the mess you've made.

There is also, as mentioned above, the fact that in order to defend myself from your attacks and to fund the defense of the litigation you have fomented I must speak and must publish. I'm sure you understand that I remain completely confident that no court, other than the odd one your mercenaries are able to compromise with bucks, babes or bull, will order me to not defend myself.

I realize you will probably claim to be offended by everything I've written in this letter. I can't do much about that because you seem to take offense no matter what I say or write, or don't. For, *inter alia*, that reason I haven't said or written it differently. I really don't blame you for being offended and I don't expect you not to be offended; nor will I be offended if you are. I think my position is obvious and I think peace is worth doing something about, even if the fomenters of war are offended. I've used the words I've used because to me they make sense and they're a facet of my craft.

This letter is not really, however you may take it, a complaint nor an attack. It is an effort to unfoment your litigation, into which I have been, albeit for some God-given purpose, drawn. So, neither forgetting nor ignoring Judge Sohigian's admonition not to settle Armstrong II, but still hoping, with my heart crossed, here is my proposal:

1. Settle the Nothling case;
2. Settle with Ed Roberts;
3. Dismiss your complaint against TGAC and Gerald Armstrong;
4. Remove all your bar complaints against Ford Greene;
5. Pay my attorney fees and costs;
6. We will dismiss the cross-complaint and appeal;
7. Cancel the agreement;
8. Return all materials you've stolen from me at any time;
9. Pay me whatever you want, including, but not limited to, nothing.

1. Malcolm Nothling has a claim and he has survived a lot to get to trial. His costs, not much by US litigation standards, must be recognized, and he must be made whole financially, ethically and publicly. I am convinced that his daughter, but for your control of her mother and her life, would enjoy a healthy, loving relationship with her father. Therefore you must do whatever is within your power to reunite them.

2. You know about the Ed Roberts case because Ms. Bartilson interrogated me about my providing assistance to Mr. Roberts in my last series of depositions in Armstrong II, and one of your lawyers, Marcello Di Mauro, in earlier times communicated about him with Ford Greene. Ed Roberts is a friend of mine who

was sucked dry and flat out robbed by your registrars on the way to an up- or downstat week of no consequence to anyone as it turns out, and always does, but Ed.

I have found myself in the silly position of being the only person in the world willing to help Mr. Roberts against your organization. Again, I have no desire to have Mr. Roberts engage you in litigation. In fact his situation can be resolved without your fomenting not only more litigation, but more ill will and silliness. For you it is merely an accounting matter. You ripped Mr. Roberts off; now pay him what is needed to make him whole again.

Mr. Roberts' case of Scientology lies, threats, treachery and thievery, his own money then used to pay your pittiless pettifoggers to prevent him from anything resembling redress, is being played and replayed every day of the year in your orgs. I would think that the three or so million you wasted on your inane USA Today ads to counter Richard Behar's few good pages could have taken care of three hundred Mr. Roberts and done a heap of good.

All your ads did was a heap of bad: more lies, more hate, more embarrassment for Scientologists everywhere, another dead forest, and an uncharitable little delay to your victims before they are made whole. The Ed Roberts case is, in my opinion, the proof of Time's theme: that you are - all of you at the top of your organization - a cult of greed. But worse, you squander your plunder, as witness Toronto, starve the good and fatten your PIs and proctors and their proctologists. And all with the fatuous excuse of a right to defend wrongness and attack rightness because your "religion's" stupidity is, in our courts of law, beyond question.

Anyway I want to have Ed's needs taken care of toot sweet. He probably wouldn't think less of you if you didn't apologize, but I think it's a good idea and sure couldn't hurt.

3. I don't care what order everything is done in. I think whatever is most practical, sensible and ergonomically sound is the way to approach this particular program, which, I'm sure can be wrapped up in a couple of days.

4. This is easy. These Ingram-generated efforts have only served to shine a light on your invidiously scheming enterprise. All your similarly baseless bar complaints against my other lawyer, Michael Flynn, came to nothing. You should learn from the earthworms. Filing no spurious bar complaints whatsoever they demonstrate their superior philosophy.

5. Although they're in the range of, I don't think fees and costs are over $500,000. Clearly nothing is going to happen

unless you cover my attorneys' fees and costs. To leave me with that indebtedness is unfair and unworkable. You will recall that I made a proposal in 1984, being then scared and weak: pay my lawyers' fees and costs of, I guessed, $150,000, and I'll quit. You, and in those days, Hubbard, said no way. I, less scared and much stronger, urge you to choose again.

6. Dismissal of the cross-complaint is easy. I'll take care of it.

8. I'm aware this may for a long time remain a pettiness you'd rather not confront. But I can guarantee that if you return my materials - the Hubbard letters manuscript, the Cones, all the other materials you and your PIs have stolen from me over the years, I will not bring criminal charges, and I won't even bring the subject up again.

9. You have to cancel the settlement agreement in order to demonstrate to yourselves that it was the wrong thing in which to put your faith. You will notice that when you cancel the agreement nothing will happen. Yet you will have freed me. And that is what you should make Scientology's only business: freeing people. You will also observe that when you free me you free yourselves; in fact you cannot yourselves be free unless you free me.

Regarding my relationship with you after you cancel the agreement, that is where you must reassert your faith. Have the faith that I will neither say nor write worse things about you if you free me to do so. As you know I can say some pretty pointed things about you now just because you won't cancel that degrading document. Put faith in what occurs in silence. Put faith in the inevitable.

7. You decide. If you think I did a lousy job unfomenting your litigation, pay me zippo. Even if it all works for everyone, timing inspired and ideas a Godsend, you don't have to pay me anything. I generally don't refuse what's offered. You know how much I'm worth.

I haven't forgotten Wollersheim, Yanny I & II, the Aznarans, the CAN litigation, claimants all over the place, your government lawsuits, the rest of the settlement signatories, your taxes, nor your image and media distress, and I think it's appropriate to say that I can help you unfoment those problems as well. I would, of course, need half a chance.

If you look deep in your hearts I believe you'll find you really do not want Scientology's legacy to be one of suppression; suppression of the Constitution, human dignity, truth, religion, justice, even suppression of your own good selves. Wouldn't it be better to be known as the people who ended the madness in peace and style; a radical recognition of the transcendence of quantum scientology. LRH was Newtonian in his physics and relativistic epistemologically. I like to call one aspect of my philosophy, *inter alia* non-mutual exclusivity.

I believe that everyone will become a person of good will, that everyone already is, has been and will forever be, that there is progress and perfection, hope and reason, that to know who we are we must accept the truth of our relationship to our Creator, that all about us that we made is illusion, that we have reason to be grateful that is so, that our Creator, God, our Father Loves us in the same Love by which He created us and holds us always safe and always loved in that Love, that we, His children, are one and One with Him, that the means by which He is remembered, and hence our relationship, and hence who we are, and hence what we know, is forgiveness, that forgiveness is the recognizing of illusion for what it is, that creation is our nature, and that everything is all there is.

With a wish for peace in 1993, I remain hopeful and,

yours sincerely,

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 949650
(415)456-8450

:ga

cc: Malcolm Nothling
Ed Roberts
Lawrence Wollersheim
Richard & Vicki Aznaran
Richard Behar
Ford Greene, Esquire
Paul Morantz, Esquire
Joseph A. Yanny, Esquire
Toby L. Plevin, Esquire
Graham E. Berry, Esquire
Stuart Cutler, Esquire
Anthony Laing, Esquire
John C. Elstead, Esquire
Michael J. Flynn, Esquire
Fr. Kent Burtner

Margaret Singer, PhD.
Cult Awareness Network
Daniel A. Leipold, Esquire
Church of Scientology International
Church of Scientology of California
Religious Technology Center
Church of Spiritual Technology
Church of Scientology ASHO
Church of Scientology AOLA
Founding Church of Scientology of Washington, D.C.
Church of Scientology Flag Service Organization
Church of Scientology of Arizona
Church of Scientology of Los Angeles
Church of Scientology of Stevens Creek
Church of Scientology of Sacramento
Church of Scientology of San Francisco
Church of Scientology of Washington State
Church of Scientology of Boston
Church of Scientology of Portland
Church of Scientology of New York

Scientology in the Schools

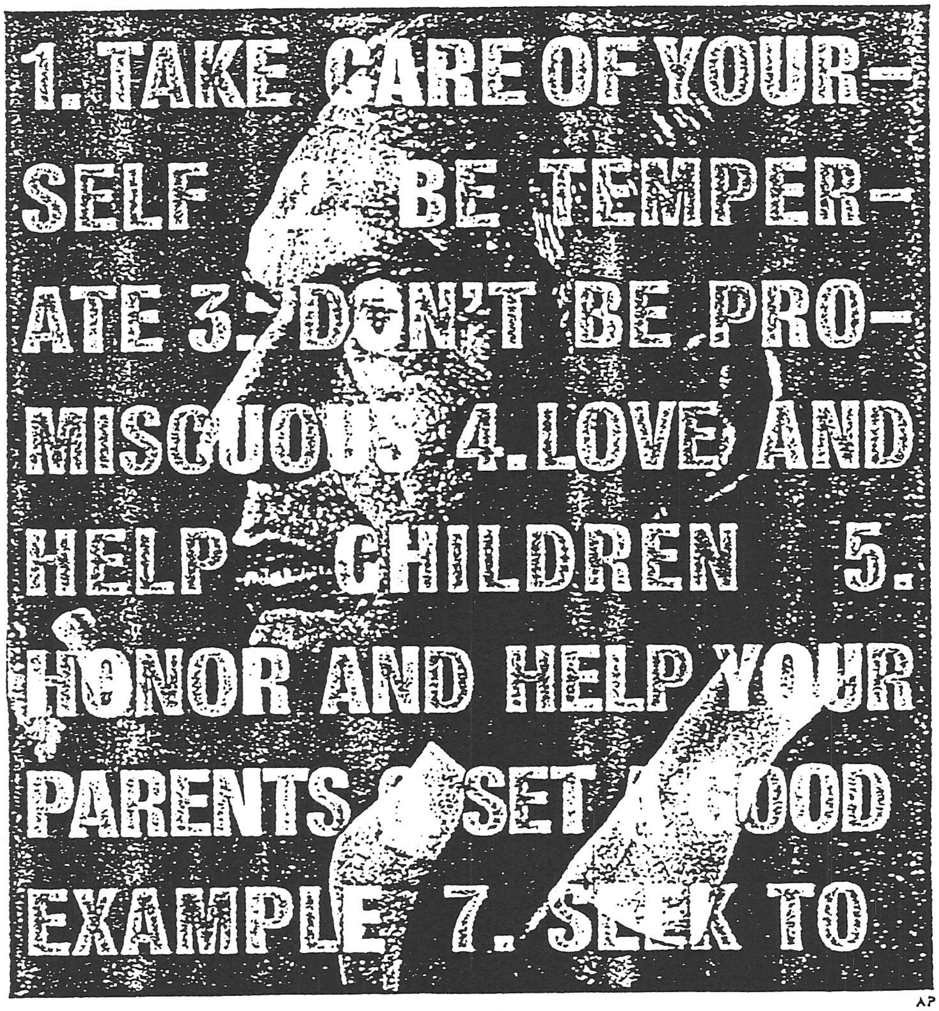
Is L. Ron Hubbard's morals text harmless?

BY KENNETH L. WOODWARD
AND CHARLES FLEMING

When Carol Burgeson received a copy of "The Way to Happiness" in the mail 18 months ago, she read it through and decided it was the perfect nonreligious vehicle for teaching moral values to her senior students at Thornton Township High School in Harvey, Ill. So Burgeson ordered more free copies of the book by L. Ron Hubbard and used them to stimulate discussions in her classes. "It seemed so harmless," she says. "Brush your teeth, do your work, don't be tardy—what's wrong with that?"

Nothing. But she was more than a little surprised to discover that the late Hubbard, who is identified in the pamphlets by name only, was the founder of the Church of Scientology, and that the pamphlets are distributed by a foundation tied closely to his controversial religion. She's not alone. With little fanfare, Hubbard's text has found its way into the nation's schools. According to the Scientologists, 8,300 public-school teachers and administrators have used the morality text since it was first published in 1981. Altogether, church officials estimate, 6.8 million pupils in 7,000 U.S. schools have studied Hubbard's moral principles; internationally, more than 34 million copies in 17 different translations have been distributed—sometimes, say Scientologists, by major corporations. "That book," says the Rev. Heber Jentzsch, president of the Church of Scientology International, "has probably had more popularity than anything Mr. Hubbard has written."

The need for books on values has long been recognized by public-school educators. Strapped for cash and under pressure from parents to deliver a values-oriented education, many teachers and administrators welcome any text that promises—as Hubbard's does—to deliver sound moral principles on a "nonreligious" basis. But when NEWSWEEK checked with public-school educators who received the text, some said that they had been misled. In Brooklyn, N.Y., Lawrence Herstik, principal of PS 238, initially welcomed "The Way to Happiness" as "a values-oriented book about righteousness and peace." But he stopped using the text after he discerned "an undercurrent of a religious nature." In Bellflower, Calif., Jeanie Cash, principal of the Frank E. Woodruff Elementary School, ordered copies of the Hubbard book but refused to put them into her classrooms when she discovered that they came from the Church of Scientology. "They sent a brochure saying it was a self-esteem program," says Cash. "I feel that I was deceived. We feel very strongly about the separation of church and state."



AP

'Way to Happiness': *Hubbard's 'secular' text*

Since "The Way to Happiness" claims that it is "not part of any church doctrine," Scientology officials insist that its use by public schools poses no problems. Hubbard wrote it in 1980, they report, the year the U.S. Supreme Court ruled that public schools in Kentucky could not display the Ten Commandments in the classroom. Like Scientology itself, says president Jentzsch, the book merely teaches "common sense." However, the volume is published by Bridge Publications, the church's own publishing house, and promoted through the Way to Happiness Foundation, one of several independent corporations designed to propagate Hubbard's thought.

All of these putatively "secular" organizations are coordinated by the Association for Better Living and Education (ABLE), which is an organ of the church. The "Way to Happiness" book is itself part of Hubbard's extensive philosophical and religious writings, which for Scientologists, says Jentzsch, "are the same as the Bible is for Christians and the Koran is for Muslims." What makes "The Way" acceptable for public-school use, Jentzsch argues, is that students who read the book do not have to follow Hubbard's moral principles, while members of the Church of Scientology must.

On the surface, there is little in the book that would trouble any educator who believes in cleanliness, honesty, integrity and tolerance. Among Hubbard's 21 moral principles is this curiously relaxed restatement of the golden rule: "Try not to do things to others that you would not like them to do to you."

But Hubbard's catechism is also studded with jarring axioms. It declares, for example, that "the way to happiness does not include murdering your friends, your family or yourself being murdered."

More important, anyone familiar with Scientology will find that the text uses key words and concepts taken directly from Scientology's religious lexicon. For instance, Scientology teaches that the fundamental point of life is "survival," and that only those who become the "cause" of their own actions can be truly happy. This is also a major theme of "The Way to Happiness." More significant, Scientology teaches that the truth is "what is true for you." This relativistic view is repeated with emphasis in the book. On the other hand, the text is silent about most of Scientology's central tenets: for example, its belief that people suffer from evil deeds done in past lives that the church's ministers can correct through expensive counseling courses, and its adamant opposition to psychiatry.

Front group? Critics of Scientology, including some former officials, argue that "The Way to Happiness" is primarily a recruiting tool for the church. According to Vicki Aznaran, who once served as inspector general of the Religious Technology Center, the church's highest ecclesiastical organization, The Way to Happiness Foundation is "a front group to get people into Scientology" and the book is designed "to make Scientology palatable to the masses." Another former church member, Gerald Armstrong, claims that Hubbard wanted "rich Scientologists to buy huge quantities of this book for distribution. He wanted to go down in history as a scientist or a philosopher or both." Both Aznaran, who runs a private detective agency in Dallas, and Armstrong, who works for an anti-Scientologist attorney in San Francisco, are currently locked in prolonged and bitter litigation with the church over a variety of claims.

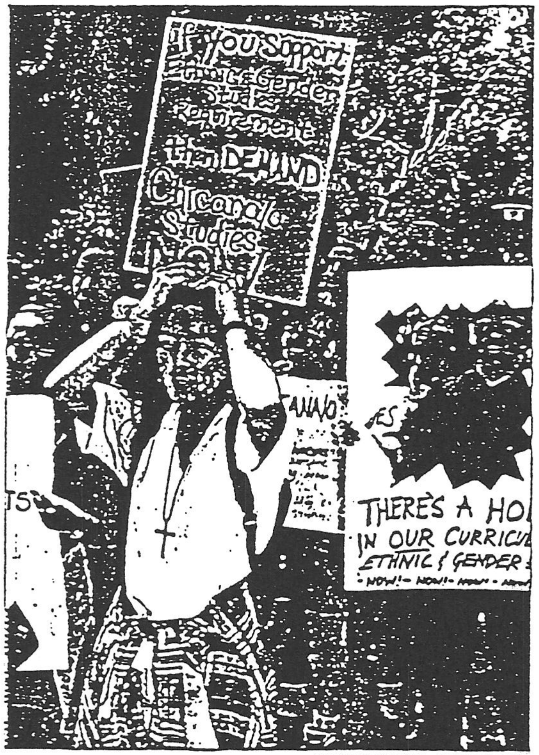
Church officials strongly deny that "The Way to Happiness" is a lure to attract potential converts. Still, the church is anxious to broaden its appeal by promoting Hubbard's various "technologies" for combating drugs, reforming criminals, teaching morality and learning how to study—and doing it through its sundry satellites: Narconon, Criminon, Applied Scholastics and The Way to Happiness Foundation. The church's encyclopedic reference text, "What Is Scientology?", claims that 23 corporate giants have used Hubbard's study technology. Yet a check of three of them—Mobil Oil, General Motors and Lancôme—brought denials of any corporate involvement with the church. But if the nation's public schools are any measure, Hubbard's tracts will continue to turn up in the most surprising places. ■

Martyrs for Multiculturalism

2035

Courses that students at UCLA might die for

For 20 years, the University of California, Los Angeles, has offered courses about Chicano culture and history. But last April, on the eve of the funeral of Cesar Chavez, the farm workers' union leader, officials announced that they would not create a special department devoted to Chicano studies—instead they pledged to improve the existing program. Since then, the campus has reverted to '60s-style protests. Students—mostly Chicanos—took over a faculty center, then trashed it. City police arrested 99 demonstrators. And now, on the lawn outside the administration building, nine demonstrators have taken a page from the Chavez manual, pledging to fast until a department is created—or they die.


If You Support Ethnic & Gender Studies Requirements then DEMAND Chicana/o Studies
THERE'S A HO
IN OUR CURRICU
ETHNIC & GENDER
NOW! NOW! NOW!

LESTER SLOAN—NEWSWEEK

A fight to the death: *Protesters at UCLA*

Is this a cause worth dying for? "We are risking our lives to save lives," says hunger striker Jorge Mancillas, assistant professor of biology at UCLA's medical school. More academic attention, he thinks, will eventually pay off in a more prosperous, stronger Chicano community. But UCLA does not have separate departments for any special-interest group. Asians, blacks and women have all had to content themselves with interdisciplinary majors taught by professors from traditional academic departments. That arrangement is unsatisfactory, say the demonstrators, because faculty members have little time or encouragement to concentrate on ethnic studies. Their solution: full academic status for Chicano studies. "We cannot continue to the next necessary step without departments," says Luis Torres, an English- and Chicano-studies professor at the University of Southern Colorado who also heads the National Association of Chicano Studies. (About 17 percent of UCLA's 23,000 students are Chicano; many have not joined the campus demonstrations.)

UCLA administrators insist that a field like Chicano studies—touching on history, sociology, literature, feminism and other disciplines—is best left as an interdisciplinary program. That structure encourages the flow of ideas among Chicano-studies faculty and other specialists. Creating separate departments, says UCLA Provost Herbert Morris, encourages a "Balkanization" that the university wants to avoid. "We need the ethnic perspectives to pervade all the departments," says Morris, who does agree that the Chicano program needed improvement.

Chancellor Charles E. Young offered to take several important steps to bolster the Chicano-studies program. First, all ethnic- and gender-studies programs would be exempt from funding cuts for two years—a critical gesture because the UC system is strapped for cash. Second, new faculty would be appointed jointly to Chicano studies and an existing department—history, say, or languages. Also, Young insists that this year's decision need not be the final one. He suggests that the idea of a full-fledged department can be re-examined in a few years. Seeking an end to the demonstrations last week, university officials offered even more funding and more faculty for the program. So far, the protesters have rejected his offers—as well as food. In a state where minorities now account for nearly half of the student body at some public universities—and sometimes more—the bitter conflict at UCLA will not be the last.

CONNIE LESLIE *with* ANDREW MURR *at UCLA*

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On April 4, 1994 I served the foregoing document described as VERIFIED SECOND AMENDED COMPLAINT FOR DAMAGES AND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF FOR BREACH OF CONTRACT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on April 4, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on _________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Gaabriel Becket
Print or Type Name

Gaabriel Becket
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

2038

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

FILED
MAY 18 1994
EDWARD M. KRITZMAN, CLERK
S Robles
BY S. ROBLES, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY [illegible] DEP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 2 through 25, inclusive,

Defendants.

AND RELATED CROSS-COMPLAINT

CASE NO. BC 052395

NOTICE OF RULING

DATE: NONE
TIME: NONE
DEPT: 30

DISCOVERY CUT-OFF: None
MOTION CUT-OFF: None
TRIAL DATE: Vacated

TO THE COURT AND ALL ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 16, 1994, the California Court of Appeal, Second Appellate District, issued an opinion AFFIRMING the issuance of the preliminary injunction in the above-entitled matter. A true and correct copy of the opinion is attached hereto as Exhibit A.

This notice is given pursuant to the Court's Order of March 23, 1994, a copy of which is attached hereto as Exhibit B.

Plaintiff requests that the stay of proceedings granted on March 23, 1994 be dissolved, a status conference be set for the earliest possible date, and this matter be re-set for trial.

Dated: May 18, 1994

Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

BOWLES & MOXON

By: Laurie J. Bartilson
Laurie J. Bartilson

Attorneys for Plaintiff,
CHURCH OF SCIENTOLOGY
INTERNATIONAL

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,
Plaintiff and Respondent,

v.

GERALD ARMSTRONG,
Defendant and Appellant.

No. B069450
(Super.Ct.No. BC052395)

COURT OF APPEAL - SECOND DIST.
FILED
MAY 16 1994
JOSEPH A. LANE Clerk
Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan & Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee Hertzberg for Plaintiff and Respondent.

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number

of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid $800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.[1]

---

[1] "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's

argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part: "Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons

referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶] Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

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DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA

employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*

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*Assigned by the Chairperson of the Judicial Council.

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San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
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(310) 459-4745

Attorneys for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	No. **BC 052395** **NOTICE OF RULING ON DEFENDANT ARMSTRONG'S MOTION FOR STAY OF PROCEEDINGS** Discovery Cut Off: Vacated Motion Cut Off: Vacated Trial Date: Vacated

On March 23, 1993, the motion by Defendant Gerald Armstrong for a stay of proceedings, or in the alternative, for an extension of time to oppose motions for summary adjudication, came before Department 30 of the above-entitled Court, the Honorable David A. Horowitz, presiding. Plaintiff Church of Scientology International was represented by Wilson, Ryan & Campilongo, Andrew H. Wilson appearing, and by Bowles & Moxon, Laurie J. Bartilson

COPY

appearing. Defendant Gerald Armstrong was represented by Ford Greene. After consideration of all the papers filed in support of and in opposition to Defendant Armstrong's motion and after considering the arguments of counsel, the Court ordered as follows:

1. Defendant's motion for stay of proceedings in Department 30 of the trial court is **GRANTED** on the grounds set forth in the Court's Minute Order issued March 23, 1993, a true and correct copy of which is attached hereto and incorporated herein by reference.

2. Counsel are **ORDERED** to report, in writing, any decision by the Court of Appeal to Department 30 within one day of the issuance of the opinion on Defendant Armstrong's appeal of the preliminary injunction issued by the Honorable Ronald M. Sohigian on May 28, 1992.

3. Any and all matters set in Department 30, including but not limited to the motions set for March 31, 1993, the Final Status Conference of April 23, 1993, and Trial of May 3, 1993, are advanced and **VACATED**.

4. Defendant is to give notice.

DATED: March 26, 1993

By:________________________
FORD GREENE

By:________________________
PAUL MORANTZ
Attorneys for Defendant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: NOTICE OF RULING ON DEFENDANT ARMSTRONG'S MOTION FOR STAY OF PROCEEDINGS

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: March 26, 1993

DEPT. 30

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: March 23, 1993

Honorable	DAVID A. HOROWITZ	, Judge	S. ROBLES	, Deputy Clerk
		, Deputy Sheriff	B. CHARLINE HOWELL	, Reporter
8	C. AGUIRRE	, C. S. L.		, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

VS

GERALD ARMSTRONG

Counsel For Plaintiff: LAURIE BARTILSON (x)
ANDREW WILSON (x)

Counsel For Defendant: FORD GREENE (x)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDNAT, GERALD ARMSTRONG, FOR STAY OR IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME TO OPPOSE MOTIONS FOR SUMMARY ADJUDICATION;

D, Mot for stay of proceedings GRANTED. The action is stayed under CCP 916. Counsel are ordered to report any decision by the Court of Appeal to this Department, in writing, within one day of the issuance of the opinion so that this Court may lift the stay.

"...an appeal stays proceedings in the trial court upon the ..order appealed from or upon the matters embraced therein or affected thereby..." CCP 916. As the Church has stated in its Summary Adjudication motions, "The facts are undisputed, however, that Armstrong has breached the Agreement repeatedly and deliberately. Because of these breaches, a preliminary injunction was issued by the Court on May 28, 1992." Obviously, the validity of the Agreement is the basis for the preliminary injunction. One of the basis for the appeal is an attack on the legality and validity of the Agreement.

The central issue of this case is the legality and validity of the Agreement. The Court of Appeal could certainly reach that issue in its determination of the validity of the injunction. If it does, that ruling could be determinative of many of the issues of this case. It makes no sense to proceed with this matter until the Court of Appeal makes its ruling.

Any and all matters set in this department, including but not limited to the Motions set for 3/31/93, the Final Status Conference of 4/23/93 and the Trial of 5/3/93, are each advanced and vacated.

Defendant shall give notice.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On May 18, 1994 I served the foregoing document described as NOTICE OF RULING on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE **FAX AND MAIL**
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on May 18, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such

envelopes by hand to the offices of the addressees.

Executed on _________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bantilson
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

2057

FILED
NOV 16 1994
OWARD HANSON
ARIN COUNTY CLERK

FILED
LOS ANGELES SUPERIOR COURT
JUN 10 1994
EDWARD M. KRITZMAN, CLERK
P Offord
BY P. OFFORD, DEPUTY

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Attorneys for Plaintiff and
Cross-Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; THE GERALD ARMSTRONG CORPORATION, a California corporation; Does 1 - 25 INCLUSIVE

Defendants.

AND RELATED CROSS-COMPLAINT

CASE NO. BC 052395

NOTICE OF MOTION AND MOTION TO ADVANCE DATE OF CONTEMPT HEARING; DECLARATION OF LAURIE J. BARTILSON

DATE: July 8, 1994
TIME: 9:30 a.m.
DEPT: 86

DISCOVERY CUT-OFF: None
MOTION CUT-OFF: None
TRIAL DATE: None

TO DEFENDANT GERALD ARMSTRONG AND HIS ATTORNEYS OF RECORD, FORD GREEN, ESQ. AND PAUL MORANTZ, ESQ.

Please take notice that on Friday, July 8, 1994 at the hour of 9:30 a.m., plaintiff will move the above-entitled Court for an order setting the hearing on the Orders To Show Cause Re Contempt, previously issued by this Court on February 19, 1993, and July 26, 1993, respectively.

This Motion is based upon the grounds that the above-entitled Court deferred said hearings pending a decision of the Second District Court of Appeals, in Action No. B069450, which decision was handed down by said court on May 19, 1994.

This Motion is based upon the Memorandum of Points and Authorities and the Declaration of Laurie J. Bartilson submitted concurrently herewith, the pleadings and papers on file herein, and such other matters as may be brought to the Court's attention.

Dated: June 10, 1994 Respectfully submitted

WILSON, RYAN & CAMPILONGO
Andrew H. Wilson

By: Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ADVANCE DATE OF CONTEMPT HEARING

I. INTRODUCTION

This action involves numerous breaches of a Settlement Agreement entered into between plaintiff Church of Scientology International and defendant Gerald Armstrong in December of 1986. In May of 1992, Armstrong was enjoined from providing voluntary aid to parties litigating claims against plaintiff. Armstrong appealed and proceeded to violate the injunction. This Court issued two Orders to Show Cause Re Contempt ("OSCs"), but stayed hearing thereon pending resolution of the appeal of the injunction (Action No. B069450 pending before the Second District Court of Appeals). On May 19, the Court of Appeals upheld Judge Sohigian. The hearing on the OSCs is now scheduled for October 20, 1994, more than four months away. Plaintiff brings the instant motion to advance that date.

II. ARGUMENT

Armstrong received $800,000 under the agreement in 1986. In 1990, his breaches began. On May 27, 1992, the Honorable Ronald Sohigian, sitting in the above-entitled department, entered an injunction in favor of plaintiff and against defendant Gerald Armstrong. That injunction prohibited Armstrong from voluntarily aiding parties litigating claims against plaintiff. No sooner had that injunction been entered, then Armstrong avowed in deposition testimony to disobey it:

> A. When, I mean, I have, I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically. I cannot ethically. I

cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is my firm intention to not honor it.

Q. No matter what a court says?

A. No court could order it. They're going to have to kill me.

Gerald Armstrong deposition, June 24, 1993 pg. 124. Bartilson Decl. Exhibit B.

Armstrong made good his promise, violating the injunction on several occasions. This Court issued two separate Orders To Show Cause Re Contempt, his on February 19, 1993 and again on July 26, 1993. Armstrong represented that his pending appeal of Judge Sohigian's injunction might result in a determination that the injunction was invalid or overbroad. This Court then decided to await the Court of Appeals' decision, putting the matter over several times, ultimately until October 20, 1994.

On May 19, 1994, the Court of Appeals' decision was handed down. Bartilson Decl. Exhibit A. The court ruled squarely against Armstrong, holding that the trial court had carefully considered the relevant factors, weighed the relative interest of the parties and granted a limited preliminary injunction which protected Armstrong's countervailing interests. Significantly, the court also specifically declined "any extended discussion of Armstrong's shotgun style brief." Id., p. 10.

There is no longer any reason to delay hearings on the Orders To Show Cause issued by this Court. Armstrong's violations of the injunction are clear. Their number, and Armstrong's own testimony, evidence his predilection for violating the injunction. To permit Armstrong to wait until the currently scheduled October 20 hearing date will encourage further violations of the injunction. As set forth in the accompanying Declaration of Laurie J. Bartilson, Armstrong's counsel will apparently be available during the first week of July and the first two weeks of August. Accordingly, plaintiff respectfully requests that this Court vacate the current hearing date of October 20, and set the hearing at the earliest possible practicable date, either before this Court or before the Honorable Ronald Sohigian, who originally issued the injunction which Armstrong has repeatedly violated, issued the original Order To Show Cause and is very familiar with the file in this matter.

Dated: June 10, 1994

Respectfully submitted

WILSON, RYAN & CAMPILONGO
Andrew H. Wilson

By: Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare:

1. I am a partner in the law firm of Bowles & Moxon, one of the attorneys for plaintiff herein. As a result, I have personal knowledge of the facts set forth below, and if called upon to do so, I could and would competently testify thereto.

2. Attached hereto and incorporated herein as Exhibit A is a copy of the decision of the Second Appellate District Court of Appeals in Action No. B 069450.

3. On June 7, 1994, I attended a status conference in the referenced action. As a result thereof, I have personal knowledge of the matters set forth in this declaration and could competently testify thereto if called as a witness.

4. At the Status Conference, the Honorable David Horowitz dissolved the stay which he had entered pending the resolution of the appeal to the Fourth District Court of Appeals in Action No. B069450. Judge Horowitz also set a trial date in the referenced matter for November 7, 1994.

5. At the Status Conference, one of defendant Armstrong's counsel, Paul Morantz, represented to the Court that defendant's main counsel, Ford Greene, had certain matters set for trial which prevented the trial in the action from being set prior to November.

6. Mr. Morantz did not indicate that any date in July or any date in August, until August 29, was unavailable for trial. Accordingly, any date in July or August should be acceptable for the contempt hearing.

7. Attached hereto as Exhibit B is a true and correct

transcript excerpt of the deposition of Gerald Armstrong taken on June 24, 1992 which I attended.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 10th day of June, 1994 at Los Angeles, California.

Laurie J. Bartilson

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL, Plaintiff and Respondent, v. GERALD ARMSTRONG, Defendant and Appellant.	No. B069450 (Super.Ct.No. BC052395)

COURT OF APPEAL - SEC [illegible]
FILED
[illegible] 1994

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan & Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee Hertzberg for Plaintiff and Respondent.

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number

of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid $800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.[1]

---

[1] "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's

argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part: "Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons

referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶] Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

/

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DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA

employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*

---

*Assigned by the Chairperson of the Judicial Council.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE: 05/16/94

Bowles & Moxon
Laurie J. Bartilson
6255 Sunset Blvd
Suite 2000
Hollywood, CA. 90028

RE: Church of Scientology International
vs.
Armstrong, Gerald
2 Civil B069450
Los Angeles NO. BC052395

IN AND FOR THE SUPERIOR COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation,

Plaintiff,

vs.

Case No. BC 052395

GERALD ARMSTRONG; DOES 1
through 25, inclusive,

Defendants.

DEPOSITION OF
GERALD ARMSTRONG

Wednesday, June 24, 1992

REPORTED BY: SUSAN M. SKIGEN, CSR #5829

since, since '89.

Q. Okay.

A. When, I mean, I have, I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention to not honor it.

Q. No matter what a court says?

A. No court could order it. They're going to have to kill me.

Q. Well, let's just hope we don't have to turn this into a death penalty case.

A. Into a what?

Q. A death penalty case.

A. Right, but you guys would.

Q. I'm not the one who stands up and pounds the table and screams at people in this deposition, your lawyer is. If I were to stand up at this deposition and scream at you to shut up, would you consider that to be an act of fair game?

A. I consider the whole thing --

Q. I know, but if I were to stand up and yell at to you shut up, would you consider that to be fair game?

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On June 10, 1994 I served the foregoing document described as NOTICE OF MOTION AND MOTION TO ADVANCE DATE OF CONTEMPT HEARING; DECLARATION OF LAURIE J. BARTILSON on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 10, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

2080

Andrew H. Wilson
Linda M. Fong
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
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(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard
Suite 2000
Hollywood, California 90028
(213) 463-4395

Attorneys for Plaintiff
and Cross-Defendant
CHURCH OF SCIENTOLOGY INTERNATIONAL

FILED
LOS ANGELES SUPERIOR COURT
JUN 15 1994
EDWARD M. KRITZMAN, CLERK
BY E. LOPEZ, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, A California not-for-profit religious corporation;

Plaintiff,

v.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendant.

AND RELATED CROSS-ACTION.

Case No. BC 052395

NOTICE OF MOTION AND MOTION BY CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT

Date: Aug. 3, 1994
Time: 8:30 a.m.
Dept: 30

Trial Date: Nov. 7, 1994
Disc. Cut-off: Oct. 7, 1994
Mtn. Cut-off: Oct. 21, 1994

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 3, 1994 at 8:30 a.m. in Department 30 of the above entitled Court, Cross-Defendant Church of Scientology International (the "Church") will move for an order adjudicating that the Second

CENTRAL COURTHOUSE
0F02 M 03 06/15/94 14:28
T#038038 0004
REG OF ACT 100.00

and Third Cause of Action of the Verified Amended Cross-Complaint of defendant and cross-complainant Gerald Armstrong ("Armstrong") (for Abuse of Process and Breach of Contract) should be adjudicated in favor of the Church as a matter of law pursuant to Code of Civil Procedure §437c(f).

This motion is made on the grounds that (1) there is no provision in the subject Settlement Agreement which prohibits the Church from doing those acts which allegedly constitute breach of the Settlement Agreement; (2) most of Armstrong's claims for abuse of process are barred by the statute of limitations; and (3) the remaining acts of which Armstrong complains are, as a matter of law, insufficient to state a claim for abuse of process.

This motion is based on this Notice, the accompanying Memorandum of Points and Authorities, the Church's Separate Statement of Undisputed Facts in Support of Motion for Summary Adjudication of Issues, the Declaration of Laurie J. Bartilson, the records and other documents on file in this action, and on all other matters that may be adduced at the hearing of this Motion.

Dated: June 14, 1994

Respectfully submitted,

BOWLES & MOXON

BY: ______________________
Laurie J. Bartilson

Andrew H. Wilson
Linda M. Fong
WILSON, RYAN, & CAMPILONGO

Attorneys for Cross-Defendant
CHURCH OF SCIENTOLOGY INTERNATIONAL

H:\ARMSTRON\new-sj-x.MTN

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On June 14, 1994 I served the foregoing document described as NOTICE OF MOTION AND MOTION BY CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 14, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward
Print or Type Name

Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

2084

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FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY DEP

FILED
LOS ANGELES SUPERIOR COURT
JUN 15 1994
EDWARD M. KRITZMAN, CLERK
BY E. LOPEZ, DEPUTY

Attorneys for Plaintiff
and Cross-Defendant
CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, A California not-for-profit religious corporation;

Plaintiff,

v.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendant.

AND RELATED CROSS-ACTION.

CASE NO. BC 052395

SEPARATE STATEMENT OF UNDISPUTED FACTS WITH REFERENCE TO SUPPORTING EVIDENCE IN SUPPORT OF MOTION OF CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL FOR SUMMARY ADJUDICATION OF GERALD ARMSTRONG; DOES THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT

DATE: Aug. 3, 1994
TIME: 8:30 a.m
DEPT: 30

Trial Date: Nov. 7, 1994
Disc. Cut-off: Oct. 7, 1994
Mtn. Cut-off: Oct. 21, 1994

Pursuant to Code of Civil Procedure Section 437(c)(f), Cross-Defendants Church of Scientology International, Church of Scientology of California, Religious Technology Center, Church of Spiritual Technology, Author Services, Incorporated, Author's Family Trust, Estate of L. Ron Hubbard, David Miscavige, and Norman Starkey ("Cross-Defendants") submit this Separate Statement of Undisputed Facts with Reference to Supporting Evidence in connection with their Motion for Summary Adjudication of Issues. The issues to be adjudicated affect the Third Cause of Action of the Verified Amended Cross-Complaint for Declaratory Relief, Abuse of Process, and Breach of Contract ("Cross-Complaint"), and the supporting evidence for such issues is noted below.

ADJUDICATION NO. 1: The Third Cause of Action of the Cross-Complaint for Breach of Contract cannot be maintained because the conduct allegedly constituting the breach is not prohibited by the Settlement Agreement.

CLAIM AT ISSUE: This adjudication, if granted, would dispose of the Third Cause of Action of the Cross-Complaint for Breach of the Settlement Agreement.

Undisputed Material Fact	Supporting Evidence
1. The Mutual Release of All Claims and Settlement Agreement (the "Settlement Agreement") is between Church of Scientology International ("CSI") and Gerald Armstrong ("Armstrong").	1. Exhibit A, Mutual Release of all Claims and Settlement Agreement, ¶ 1.
2. The Settlement Agreement was executed by Armstrong and his attorney, Michael J. Flynn, on December 6, 1986, and by CSI on December 11, 1986.	2. Id. at p. 16.
3. The Settlement Agreement states that it "contains the entire	3. Id. at ¶ 9.

agreement between the parties hereto, and the terms of this Agreement are contractual and are not a mere recital."	
4. The Settlement Agreement states that it may be amended only by a written instrument executed by Armstrong and CSI.	4. Id. at ¶ 9.
5. The Settlement Agreement states that Armstrong and CSI carefully read and understood the contents of the Settlement Agreement and signed it of their own free will, and it is the intention of the parties to be legally bound hereby.	5. Id. at ¶ 9.
6. Under the Settlement Agreement, Armstrong acknowledged that he entered into the Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily executed the Agreement of his own free will.	6. Id. at ¶ 11.A.
7. Under the Settlement	7. Id. at ¶ 11.B.

Agreement, Armstrong acknowledged that he had conducted sufficient deliberation and investigation, either personally or through other sources of his own choosing, and had obtained advice of counsel regarding the terms and conditions set forth therein, so that he may intelligently exercise his own judgment in deciding whether or not to execute the Settlement Agreement.	
8. Under the Settlement Agreement, Armstrong acknowledged that he had carefully read the Settlement Agreement and understood the contents of it.	8. Id. at ¶ 11.C.
9. Under the Settlement Agreement, Armstrong warranted that he had received independent legal advice from his attorneys with respect to the advisability of making the settlement provided in the Settlement Agreement and in executing it.	9. Id. at ¶ 18.(A).
10. Armstrong knew the provisions of the Settlement Agreement did not	10. Exhibit B, Deposition of Gerald Armstrong, June 24, 1992, at

prevent the Church from disclosing confidential information.	160:19-162:3.
11. The Third Cause of Action of the Cross-Complaint for Breach of Contract alleges that the Church, and/or its agents, and/or other Scientology-related entities, have engaged in ongoing breaches of the Settlement Agreement by making reference to Armstrong, (a) in communications to the press, (b) in filing pleadings and declarations in various litigations.	11. Cross-Complaint at ¶ 71.
12. The Settlement Agreement contains no provisions which prohibit Cross-Defendants from making reference to Armstrong in communicating to the press or in pleadings and declarations in various litigation.	12. The Settlement Agreement, Exhibit A.
13. Armstrong received a portion of a total sum paid to his attorney, Michael Flynn, in settlement of all claims of Mr. Flynn's clients.	13. Verified Amended Complaint (hereinafter "Complaint"), ¶ 13; Answer, ¶ 13; Mutual Release of All Claims and Settlement Agreement, ¶ 3, Exhibit A.

14. On December 11, 1986, a dismissal with prejudice was filed in the case of Church of Scientology of California v. Armstrong, Los Angeles Superior Court Case No. 420 153 ("Armstrong I").	14. Notice of Dismissal, Exhibit C.
15. At the time he entered into the Settlement Agreement, Armstrong knew that the Settlement Agreement prevented him from disclosing information concerning the Church, but that the Church was not similarly required to refrain from discussing him.	15. Exhibit B, Deposition of Gerald Armstrong, June 24, 1992, at 160 - 161; Exhibit D, Armstrong's Memorandum of Points and Authorities in Opposition to Motion for Preliminary Injunction, pp. 50 - 52.
16. The Settlement Agreement provides in Paragraph 18(B) that the parties, ". . . acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein."	16. Exhibit A, Settlement Agreement, ¶ 18(B).

ISSUE NO. 2: The Second Cause of Action of the Amended Cross-Complaint for Abuse of Process must be dismissed because the alleged acts are either outside the one-year statute of limitations or there is no misuse of process.

CLAIM AT ISSUE: This adjudication, if granted, would dispose of the Second Cause of Action of the Amended Cross-Complaint for Abuse of Process.

Undisputed Material Fact	Supporting Evidence
17. The conduct alleged in paragraphs 13, 14, 15 through 24, 26, 27, 29, 30, 33 through 38, 40, 43 through 48 and 57 of the Amended Cross-Complaint ("Cross-Complaint") is alleged to have occurred prior to July 22, 1991.	17. Amended Cross-Complaint, ¶¶ 13, 14, 15 through 24, 26 and 27, 29 and 30, 33 through 38, 40, 43 through 48 and 57.
18. The conduct alleged in paragraphs 49, 51, and 55 of the Cross-Complaint does not include conduct which invoked the process of any court.	18. Amended Cross-Complaint, ¶¶ 49, 51, 55.
19. Armstrong began working for attorney Joseph Yanny as a paralegal on the case of Aznaran v. Church of Scientology of California, et al., United States District Court for the Central District of California, No. CV 88-1786 JMI (Ex) (the "Aznaran case") on or about July 15, 1991.	19. Ex. E, Declaration of Laurie J. Bartilson, ¶ 6; Ex. F, Declaration of Gerald Armstrong, July 19, 1991
20. The only declarations filed in the	20. Exhibit E, Bartilson

Aznaran case which mention Armstrong are: a. Declaration of Laurie J. Bartilson dated August 23, 1991. b. Declaration of Laurie J. Bartilson dated August 26, 1991. c. Declaration of Lynn R. Farny dated August 26, 1991. d. Declaration of Laurie J. Bartilson dated September 3, 1991. e. Declaration of August Murphy dated September 4, 1991.	Declaration, ¶ 9, and Exhibits 1 - 5 thereto.
21. Armstrong filed declarations in the Aznaran case on August 26, 1991 and September 3, 1991, which discussed his alleged experiences in the Church.	21. Exhibit E, Declaration of Laurie J. Bartilson, ¶8.
22. The Settlement Agreement provides that the Los Angeles Superior Court has continuing jurisdiction to enforce the Settlement Agreement in the event of a breach.	22. Exhibit A, Settlement Agreement, ¶ 20.
23. In September, 1993, the Church learned of Armstrong's filing of declarations in the Aznaran case.	23. Exhibit E, Declaration of Laurie J. Bartilson, ¶¶ 2 - 8, 11.

Church counsel determined that these actions and others were violations of the Settlement Agreement.	
24. In December, 1991, the Church brought a motion to enforce the Settlement Agreement which alleged that Armstrong had breached the Agreement, and which sought damages and a permanent injunction against Armstrong. The sole purpose of this motion was to enforce the Settlement Agreement against Armstrong.	24. Id., ¶12.
25. In December, 1991, the Court denied the Church's motion to enforce the Settlement Agreement on the ground that the Settlement Agreement itself was insufficient to confer continuing jurisdiction upon the Court.	25. Id., ¶13; Exhibit G, Transcript of Proceedings, pp. 63 - 65.
26. In February, 1992, the Church filed the Complaint herein, seeking damages and a preliminary and permanent injunction for Armstrong's breaches of the Settlement	26. Verified Complaint.

Agreement.	
27. Judge Dufficy ordered this action moved from Marin County to Los Angeles County, but only after issuing a temporary restraining order prohibiting Armstrong from further breaching the Settlement Agreement.	27. Exhibit E, Bartilson Dec., ¶15; Exhibit H, Order of March 5, 1992; Exhibit I, Order of March 24, 1992.
28. Before the file in this case was moved to Los Angeles, but after the TRO was issued, Armstrong discussed his experiences with the Church for hours with attorneys for litigants against protected entities, and gave interviews to the press in which he also disclosed his experiences with the Church.	28. Exhibit E, Bartilson Dec., ¶16-17.
29. The TRO issued by Judge Dufficy provided that Armstrong and his agents were enjoined from violating the Settlement Agreement, including the following provisions, "2. Armstrong is restrained from violating Paragraph 7(D) which prohibits Armstrong from creating or publishing books or magazine articles,	29. Exhibit H; Exhibit E, Bartilson Dec., ¶¶ 16-18.

disclosing his experiences with Scientology, and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations listed in paragraph 1 of the Agreement ("Scientology organizations") affiliated therewith, disclosing documents identified in Exhibit A to the Settlement Agreement, including films, tapes, photographs, recordings or variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the Scientology organizations;

"3. Defendant is restrained from violating the provisions of Paragraph 7(G) which prohibits Defendant from voluntarily assisting or cooperating with any person adverse to Scientology in any proceeding against any of the Scientology organizations, or from cooperating in any manner with any organizations aligned against Scientology;

"4. Defendant is restrained

from violating the provisions of Paragraph 7(H) which prohibits Defendant from testifying or participating in judicial or administrative proceedings adverse to Scientology or any of the Scientology organizations unless compelled to do so by subpoena or lawful process;

"5. Defendant is restrained from violating the provisions of Paragraph 10, which prohibits Defendant from assisting or advising anyone, including individuals, partnerships, associations, corporations, or governmental entities contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any of the Scientology organizations. . . ."

As a result, the Church applied for an order to show cause re contempt, the sole purpose of which was to enforce the Settlement Agreement and the TRO.

30. The Marin Court did not rule on

30. Exhibit J, Order of March 27,

the merits of the Church's application for an order to show cause re contempt, but simply instructed the Church to re-file it in Los Angeles.	1992.
31. On May 28, 1992, the Honorable Ronald Sohigian issued a preliminary injunction enforcing the Settlement Agreement, finding, *inter alia*, that the Church had demonstrated a substantial probability of success on the merits, had been irreparably harmed by Armstrong's breaches, and that the earlier denial of the motion to enforce the settlement agreement on jurisdictional grounds did not preclude the bringing of the action.	31. Exhibit K, Order of May 28, 1992.
32. On May 16, 1994, the Second District Court of Appeal affirmed the order granting a preliminary injunction, which it held restrained "Armstrong's voluntary intermeddling in other litigation against [the] Church, in violation of his own agreement."	32. Exhibit L, Opinion and Order of May 16, 1994, pp. 8-11.
33. The case identified by Armstrong in the Amended Cross-Complaint, ¶	33. Exhibit M, Complaint in *Church of Scientology International v. Xanthos,*

50, is the case of Church of Scientology International v. Xanthos, et al., United States District Court for the Central District of California, Case No. 91 4301 SUW (Tx) ("Xanthos").	et al.
34. Xanthos is a complaint against numerous IRS agents for constitutional violations. The allegation that Armstrong aided the agents in their illegal and fruitless criminal investigations is plainly a part of the constitutional violations alleged.	33. Exhibit M, passim.
35. In August, 1991, Armstrong began working for Ford Greene as a paralegal on the Aznaran case.	34. Exhibit E, Bartilson Dec., ¶¶ 9, 11.

Dated: June 14, 1994

BOWLES & MOXON

By: Laurie J. Bartilson

Andrew H. Wilson
Linda M. Fong
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff and
Cross-Defendant CHURCH OF
SCIENTOLOGY INTERNATIONAL

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

EXHIBIT A

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose. 2102

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(T[illegible]), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flynn

MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

Heber C. Jentzsch for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPENDIX A

1. As used herein, the term "document" or "documents" include but are not limited to all originals, file copies and copies not identical to the original, no matter how prepared, of all writings, papers, notes, records, books and other tangible things including, by way of example and not of limitation, the following:

a. Memoranda, notes, calendars, appointment books, shorthand or stenographer's notebooks, correspondence, letters and telegrams, whether received, sent, filed or maintained internally;

b. Drafts and notes, whether typed, penciled or otherwise, whether or not used;

c. Minutes, reports and summaries of meetings;

d. Contracts, agreements, understandings, commitments, proposals and other business dealings;

e. Recordings, transcriptions and memoranda or notes made of any telephone or face-to-face oral conversations between or among persons;

f. Dictated tapes or other sound recordings;

g. Computer printouts or reports and the applicable program or programs therefor;

h. Tapes, cards or any other means by which data are stored or preserved electrically, electronically, magnetically or mechanically, and the applicable program or program therefor (from which plaintiff may reproduce or cause to be reproduced such data in written form);

i. Pictures, drawings, photographs, charts or other graphic representations;

j. Checks, bills, notes, receipts, or other evidence of payment;

k. Ledgers, journals, financial statements, accounting records, operating statements, balance sheets and statements of account.

2115

IN AND FOR THE SUPERIOR COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

Case No. BC 052395

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

DEPOSITION OF

GERALD ARMSTRONG

Wednesday, June 24, 1992

REPORTED BY: SUSAN M. SKIGEN, CSR #5829

sold you out; right?

A. I don't think I ever have used those words and I won't now because Michael Flynn was under the same pressure that I was under. He really had been attacked, you know, and I don't fault Michael Flynn, although it sure hurt.

I really fault the organization for using Michael Flynn as a vehicle to get to me. I mean, that's just corrupt, for them to play with him at all to get to me, his client, it's corruption.

And what were they doing with him, he was going to settle his case and they were going to end the attacks on him. Whereas he gives me a contract which says on its face they can continue to attack you with impunity, Mr. Armstrong.

Q. And --

A. Who but a madman would sign such a document?

Q. And at the time you got that agreement you recognized that problem with it, that it didn't prohibit them from saying whatever they wanted about you; right?

A. Well, I also understood from basic understanding and from talking to Michael Flynn that as soon as they open their mouth and say one word, they've waived it, you have a new unit of time, they've violated it, that's it, you're free to talk, you can respond because you cannot, this does not have to do with future acts.

It does not say specifically they are free to, they will interpret it that way. And I recognize that as soon as I hear that they've dumped documents on the L.A. Times, soon as I know that they've filed all sorts of false most scurrilous statements about me in the high court in London, I know that that's going on.

MR. GREENE: Just a second. Let me take about a two minute break.

MR. WILSON: Sure. Go ahead. Any time you want to.

(Short recess.)

MR. WILSON: Okay.

MR. GREENE: I don't think you want the last answer.

(Pending question read by the reporter.)

MR. WILSON: No, I don't.

Let's mark this.

MR. GREENE: Did we mark No. 6, just for the record? I know you asked him some questions based on it, but I don't know if it actually got into the record as identified as being six?

MR. WILSON: Yes, it did.

MR. GREENE: Okay. Thanks.

MR. WILSON: Q. After how long did this meeting with Mr. Flynn and Mr. Walters take approximately?

A. My best recollection is half an hour.

Q. And was Mr. Walters there the whole time?

A. I believe so.

Q. Where did it take place?

A. It was in a hotel in Westwood.

Q. Okay.

A. And I don't recall the name of it.

Q. Have you given us your best recollection of everything that happened at that meeting as far as you can remember now?

A. I've given you a recollection of everything in answer to your questions. I don't know if I can come up with more just like that.

Q. You testified that the liquidated damages provision was discussed; right?

A. Right.

Q. And Mr. Flynn told you that that was unenforceable; right?

A. Right. I mean, I, I had seen that, in fact, I had signed documents like that inside the organization, so I knew that they were unenforceable.

"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block.

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FILED

DEC 11 1986

FRANK S. ZOLIN County Clerk

BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERALD ARMSTRONG,

Cross-Complainant,

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation,

Cross-Defendant.

No. C 420 153
(Severed Action)

ORDER DISMISSING ACTION WITH PREJUDICE

Upon consideration of the parties' Stipulation for Dismissal, the "Mutual release of All Claims and Settlement Agreement" and the entire record herein, it is

ORDERED AND ADJUDGED:

1. That this action is dismissed with prejudice.

2. That an executed duplicate original of the parties' "Mutual Release of All Claims and Settlement Agreement" filed herein under seal shall be retained by the Clerk of this Court under seal.

Dated: December 11, 1986

Hon. Paul G. Breckenridge

C

HUB LAW OFFICES
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California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	No. 152 229 **ARMSTRONG'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SCIENTOLOGY'S MOTION FOR A PRELIMINARY INJUNCTION** Date: March 20, 1992 Time: 9:00 a.m. Dept: 4 - Specially Set

COPY

someone or something was or was not adverse to, or aligned against Scientology. The agreement is not specifically enforceable because not only would it be impossible for the Court to decipher the ambiguities inherent in the agreement; even if it could rationally construe the agreement, it could never enforce it.

Additionally, since it would be impossible for the Court to enforce the agreement, it is not appropriate for the Court to issue an injunction.

e. Since There Is No Mutuality Of Remedy, Specific Performance Will Not Lie

In bilateral contract, such as the agreement herein, mutuality of obligation and remedy is necessary because of mutual promises. The doctrine requires that the promises on each side must be binding obligations in order to be consideration for each other. Mattei v. Hooper (1958) 51 Cal.2d 119, 122, 330 P.2d 625; Larwin-Southern Calif. v. JGB Inv. Co. (1979) 101 Cal.App.3d 606, 637, 162 Cal.Rptr. 52. In order for the agreement to be obligatory on either party, it must be mutual and reciprocal in its obligations. Harper v. Goldschmidt (   ) 156 Cal. 245, 104 P. 451.

Paragraphs 4A and 4B of the agreement prohibit Armstrong from litigating Scientology's complaint against him on appeal while allowing Scientology to litigate the matter in the appellate courts to the extent it desired.

Paragraph 7D prohibited Armstrong from speaking to others about Scientology, but does not prohibit Scientology from talking to others about Armstrong.

Paragraph 7E required Armstrong to deliver documents about

Scientology to Scientology, but does not require Scientology to deliver to Armstrong documents it possessed concerning him.

Paragraph 7G prohibited Armstrong from assisting or cooperating with persons adverse to, or aligned against Scientology, but did not prohibit Scientology from assisting or cooperating with persons who were aligned against or adverse to Armstrong.

Paragraph 7H prohibited Armstrong from testifying about Scientology, but did not prohibit Scientology from testifying about Armstrong. [23]

There are two provisions in the agreement that are mutual. One is that Armstrong would dismiss his Cross-Complaint in consideration for a payment of money. The other was in Paragraph 7I which stated that neither party would say anything about the other in future litigation. As to the former, Scientology obtained what it paid for, and as to the latter, Scientology has consistently breached it. Thus, as to the provisions that Scientology seek to specifically enforce, specific performance can not be had because there is an absence of mutuality.

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[23] Lawrence Heller, the attorney who represented to this Court that "Only Armstrong's cross-complaint was involved in the settlement," Heller Decl. In Support of Preliminary Injunction at 1:24, states that it was the intention of the parties that Scientology would enjoy a unilateral right to talk about Armstrong, but that he was to say nothing in response. Id. at 2:18-3:5. The reasonableness of Armstrong's rejection of Heller's claim, Exhibit 2 at ¶, is supported by Judge Breckenridge's decision, Exhibit 1-G at 1:28-3:26, and the official investigation if the Los Angeles County District Attorney's Office of the so-called "police-sanctioned investigation" of Armstrong. See, Exhibit 2-M, 2-N, and 2-O. In light of the surrounding circumstances and his uncompromising stand against Scientology, it is not reasonable to conclude that Scientology could say whatever it wanted about Armstrong in its legal papers, Exhibits 2-F, 2-G, 2-H, 2-I, 2-J, and 2-K, but he was required not to respond in papers of his own.

2. To The Extent That The Agreement Is In Restraint Of Trade, It Is Invalid.

Scientology contends that enforcement of the agreement should include preventing Armstrong from working as a paralegal for Ford Greene. Cmplt. at 8:25-9:15; Memo. In Support, at 9:17-10:12. Such is an unreasonable restrain of trade.

Business and Professions Code section 16600 provides that, subject to exceptions contained in its chapter, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind to that extent is void." The Restatement 2d, Contracts § 186 states: "(1) A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of trade. (2) A promise is in restraint of trade if its performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation."

Although covenants not to compete may be enforceable if for a limited time period, such a covenant in perpetuity is not enforceable. Thus, the lifetime prohibition of Armstrong working as a paralegal is void.

3. Armstrong Has Effective Affirmative Defenses

a. Laches

A long wait before applying for a preliminary injunctior may be evidence that "the harms of which [plaintiff] complain[s] could not have been immediate and urgent." Youngblood v. Wilcox (1989) 207 Cal.App.3d 1368, 1376, 255 Cal.Rptr. 527.

Scientology claims that in June, 1991, Cmplt. at p. 2:28, Armstrong began his so-called campaign of "hatred and ill-will"

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. BC 052395 DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT DATE: Aug. 3, 1994 TIME: 8:30 a.m. DEPT: 30 DISC CUT-OFF: Oct. 7, 1994 MTN CUT-OFF: Oct. 21, 1994 TRIAL DATE: Nov. 7, 1994

I, LAURIE J. BARTILSON, hereby declare:

1. I am a member of the law firm of Bowles & Moxon and am an attorney admitted to practice in the State of California. My firm represents plaintiff and cross-defendant Church of Scientology International ("Church") in the instant case. I have personal knowledge of the matters specified in this declaration and, if

called upon to testify on such matters, would and could do so competently.

2. I am also counsel of record for the Church in the case of Religious Technology Center et al. v. Joseph A. Yanny et al., Los Angeles Superior Court Case No. BC 033035 (the "Yanny case"), and counsel for the Church in the case of Vicki Aznaran et al. v. Church of Scientology of California et al., United States District Court for the Central District of California, Case No. CV 88-1786 JMI(Ex).

3. Joseph Yanny represented the Church and other related entities as general counsel and in litigation matters from 1983 until 1987.

4. In July, 1991, Yanny substituted into the Aznaran case as counsel for the Aznarans against the Church and related entities. The Church asked Yanny to remove himself from the case, because of his prior employment as the Church's counsel. When Yanny refused, the Church moved for his disqualification.

5. While the Church's motion for disqualification was pending before the federal court, Yanny continued to act as the Aznarans' counsel, and to file memoranda, motions and other documents on their behalf. Acting on the advice of counsel, including myself, the Church initiated the Yanny action, and requested that Yanny be enjoined from his adverse representation of the Aznarans.

6. The Church sought and obtained a preliminary injunction against Yanny in the Yanny case. I was present during the hearings which preceded the issuance of the injunction. During those proceedings, Yanny asserted that Gerald Armstrong had been employed by him to aid him as a paralegal on the Aznaran case. Yanny also submitted to the court several declarations signed by Armstrong in which Armstrong, inter alia, described his purported experiences with the Church, disclosed portions of the Settlement Agreement, and admitted that he had voluntarily come to Los Angeles at Yanny's request for the purpose of helping Yanny with the Aznaran case.

7. On July 24, 1991, the federal court in the Aznaran case issued an order sua sponte withdrawing its permission for Yanny to substitute into the

Aznaran case on behalf of the Aznarans, and ordering Ford Greene reinstated as the Aznarans' counsel.

8. Declarations of Gerald Armstrong were filed in the Aznaran case by Greene on August 26, 1991 and September 3, 1991. In paragraph 18 of his September 3 declaration, Armstrong admitted that he had been providing Greene with paralegal assistance in the Aznaran case.

9. The Church filed declarations in the Aznaran case which mention or concern Armstrong as follows:

a. Declaration of Laurie J. Bartilson dated August 23, 1991. This declaration states that on August 19, 1991, a man who identified himself to me as Gerry Armstrong answered the telephone in Mr. Greene's office, and took a message for Mr. Greene. [¶3.] A true and correct copy of this declaration is attached hereto as Exhibit 1.

b. Declaration of Laurie J. Bartilson dated August 26, 1991. This declaration again states that on August 19, 1991, a man who identified himself to me as Gerry Armstrong answered the telephone in Mr. Greene's office, and adds that Armstrong told me that he was at Mr. Greene's office "helping out." [¶3.] It also identifies two declarations filed by Armstrong and Yanny in the Yanny case in which Armstrong and Yanny claimed that Armstrong was Yanny's paralegal. [¶4.] A true and correct copy of this declaration is attached hereto as Exhibit 2.

c. Declaration of Lynn R. Farny dated August 26, 1991. This declaration identifies a picture of Armstrong which was taken by a private investigator at Mr. Greene's office. [¶3.] It also quotes statements made by Armstrong in 1984 on a videotape which Mr. Farny states he has personally viewed. [¶4, 6.] A true and correct copy of this declaration is attached hereto as Exhibit 3.

d. Declaration of Laurie J. Bartilson dated September 3, 1991. This declaration again states that on August 19, 1991, a man who identified himself to me as Gerry Armstrong answered the telephone in Mr. Greene's office, and took a message for Mr. Greene [¶3]. It also states that on August 30, 1991, Armstrong called me on Mr. Greene's behalf, and asked me to provide him with additional copies of papers and exhibits. [¶4.] A true and correct copy of this declaration is attached hereto as Exhibit 4.

e. Declaration of August Murphy dated September 4, 1991. This declaration states that on August 19, 1991, at 3:30 p.m., Mr. Murphy went to Greene's offices to pick up some papers. While there, he observed a man sleeping on the floor of Mr. Greene's office. [¶3.] When Mr. Murphy returned to Mr. Greene's office at 7:30, the man who had been sleeping on the floor identified himself to Mr. Murphy as Gerald Armstrong, and told Mr. Murphy to return at 9:00 p.m. [¶6.] When Mr. Murphy returned at 9:00 p.m., Armstrong announced that he was going to Kinko's to pick up the copies. He left, and returned with a large box of documents at approximately 9:35 p.m. Armstrong and Greene then assembled a set of documents and gave them to Mr. Murphy. [¶¶ 7, 8.] A true and correct copy of this declaration is attached hereto as Exhibit 5.

10. Each of the declarations identified in paragraph 9, supra, was filed in support of the Church's motion to dismiss the Aznaran case. The Church sought dismissal as an appropriate sanction for the deliberate hiring by the Aznarans of the Church's former lawyer. The Church argued that Armstrong's employment as a paralegal for first Yanny and then Greene gave rise to an inference of Yanny's continuing improper involvement in the Aznaran case. All of the declarations were

obviously and reasonably filed to provide the court with evidence in support of this theory.

11. Upon review of the declarations of Armstrong submitted in Yanny and in Aznaran, the statements of Yanny, my own personal contact with Armstrong acting as Greene's paralegal, as well as the Mutual Release and Settlement Agreement ("the Agreement") signed by Armstrong in December, 1986, in the case of Church of Scientology of California v. Gerald Armstrong, LASC No. C 420 153 ("Armstrong I"), I concluded that Armstrong had plainly and obviously violated the terms of the Agreement. Specifically, Armstrong had breached paragraphs 7(D), 7(H), 7(G), 10, 12 and/or 18 of the Agreement.

12. On October 3, 1991, because of these clear and continuing violations of the Agreement, the Church filed a motion to enforce the Agreement in Armstrong I. The sole purpose of the filing of that motion was to obtain the relief requested; i.e., the benefits of the Agreement for which the Church had bargained and paid Armstrong approximately $800,000.

13. On December 23, 1991, the Armstrong I court determined that it did not have continuing jurisdiction over the parties and the Agreement, and so denied the Church's motion.

14. Because Armstrong had breached the Agreement as described herein, and because Armstrong was continuing to breach the Agreement in, at least, his work for Mr. Greene, the Church initiated the instant action on February 4, 1992, seeking damages for breach of contract and a preliminary and permanent injunction. The sole purpose of the filing of the Complaint herein was to obtain the relief which it requests.

15. On March 5, 1992, Judge Dufficy issued a Temporary Restraining Order ("TRO") against Armstrong which prohibited Armstrong from further breaching the Agreement. On March 20, 1992, Judge Dufficy extended the duration of the TRO during the pendency of the transfer of the case to Los

Angeles.

16. On March 20, 1992, following the hearing in which Judge Dufficy extended the TRO, I observed Armstrong and Greene giving interviews to members of the press in the Marin County courthouse. Later I saw a broadcast on CNN in which Armstrong made statements concerning his experiences with the Church.

17. In late March, I read the transcript of a deposition in which Armstrong testified under oath that he had, inter alia, voluntarily discussed his experiences with the Church for several hours with attorneys for plaintiffs in a case in which a Scientology-related entity was a named defendant, and provided them with documents.

18. My co-counsel and I concluded that Armstrong's conduct described in paragraphs 16 and 17 were plain violations of the TRO, and brought a motion requesting the Marin Court to issue an OSC re: contempt.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of June, 1994, at Los Angeles, California.

Laurie J. Barth

Laurie J. Bartilson

H:\ARMSTRON\NEW-SJ-X.DEC

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am a partner in the firm of Bowles & Moxon, which is co-counsel of record for defendants in the above-captioned case. I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, at approximately 10:30 a.m., I called the offices of Ford Greene in San Anselmo, California. The telepone was answered by an answering machine, which played a message stating that Ford Greene had had an emergency, and would not be able to return any calls until Monday, August 19. I left a message on the machine, giving my name and telephone number, and requesting that Mr. Greene contact me concerning service of the papers which he had due to be filed that day.

3. At approximately 1:15 p.m. on August 19, 1991, I again called Greene's offices. This time a man answered the telephone, and offered to take a message for Ford Greene. When I asked the man for his name, he told me that he was Gerry Armstrong. I was surprised to hear this, as I knew that until recently, Mr. Armstrong had been working as a paralegal for Joseph Yanny. I explained to Mr. Armstrong that I wanted to coordinate service of the papers with Mr. Greene, and offered to have a courier pick them up from Greene's offices. Mr. Armstrong promised to relay the message.

4. At approximately 2:15 p.m. on August 19, 1991, Mr. Greene returned my call. I was tied up, but called him back shortly thereafter. Mr. Greene informed that the papers "were

at Kinko's" being copied, and that he had been told that they would be ready between 5:00 and 6:00. He agreed to call my offices when they were ready for pickup.

5. I later discovered that my San Francisco courier had already left for San Anselmo. As the drive was substantial, he decided to simply wait at Mr. Greene's office until the papers were ready,

6. Mr. Greene did not give the courier copies of the papers until approximately 9:00 p.m. The courier then called my offices, and listed the materials which he had been given. The quantity of papers was substantially smaller than I had expected.

7. At approximately 9:45 p.m., I called Mr. Greene's offices, and once again spoke with Mr. Greene. I told him that I wanted to review with him what I the courier had gotten, as it seemed incomplete. Mr. Greene interrupted me, and said, "Let me make it easier for you. Let me tell you what you don't have. You don't have any separate statements with the summary judgment oppositions, you don't have an opposition to the motion to dismiss, you don't have an opposition to the Singer motion, and you don't have an opposition to the Rule 42 motion."

8. I asked Mr. Greene why it was that I had not been served with these papers. He stated that I had not been served because they were not completed and had not yet been filed. He stated that he planned to continue to work on them and to file them late. He said, "I assume that you all will object to that." I told him that I thought that we would, and expressed

the view that the Court would be likely to object as well, since the deadlines were imposed by the Court.

I declare under the penalties of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 23rd day of August, 1991, at Los Angeles, California.

LAURIE J. BARTILSON

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I recognized that Armstrong was a person who has been a long-term litigation adversary of my client, Church of Scientology of California, having been sued for conversion of documents belonging to the Church's Founder.

4. In addition, in a case pending in Los Angeles Superior Court, Religious Technology Center, et al. v. Yanny, Case No. BC 033035. Armstrong and Joseph Yanny have both filed declarations under penalty of perjury that Armstrong was hired by Yanny as a paralegal to work on this case. (Ex. B, Declaration of Joseph A Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald Armstrong, July 19, 1991, para. 4). Even though Yanny protested its issuance, partially on the ground that Armstrong was his paralegal in this case (Ex. G, Transcript of August 6, 1991, at 25), Yanny was preliminarily

enjoined in that case from directly or indirectly acting as counsel against defendants on behalf of either the Aznarans or Gerald Armstrong.

I declare under the penalties of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed this ___ day of August at Los Angeles, California.

LAURIE J. BARTILSON

DECLARATION OF LYNN R. FARNY

I, Lynn R. Farny, do declare:

1. I am over 18 years of age and make this declaration of my own personal knowledge and for those matters stated upon information and belief, I believe them to be true and accurate. If called as a witness to testify as to the matters herein, I could and would do so competently.

2. I am corporate Secretary of the Church of Scientology International ("CSI"), a California religious corporation.

3. I have reviewed the photographs which are attached to the declarations of Sam Brown and Thorn Smith, Exhibits D and I to the Supplemental Memorandum in Support of Motion to Dismiss the Complaint. I recognize the individual in the photographs attached to the Smith declaration as John Koresko and the individual in the photographs attached to the Brown declaration as Gerald Armstrong.

4. I am well familiar with Gerald Armstrong, as I have worked in the legal department of CSI since 1984, and prior to that in the legal department of Church of Scientology of California ("CSC"). I have actively followed the events occurring during that time in lawsuit against Gerald Armstrong by CSC regarding his theft of private documents belonging to the Founder of the Scientology religion.

5. I am also well familiar with John Koresko, who was office manager and later a paralegal for Joseph A. Yanny, CSI's former attorney, during the time that Yanny represented

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CSI and afterwards, when CSI and CSC sued Yanny for his breaches of fiduciary duties.

6. That Armstrong is amenable to the kind of covert representation in which Yanny is engaging in this case is highlighted by his recorded remarks made in November 1984. At that time, Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual whom Armstrong thought to be one of his "agents" (but who in reality was loyal to the Church). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations against the Church leadership:

> ARMSTRONG: They can allege it. They can allege it. They don't even have -- they can allege it.
>
> RINDER: So they don't even have to -- like -- they don't have to have the document sitting in front of them and then --
>
> ARMSTRONG: Fucking say the organization destroys the documents.
>
> * * *
>
> Where are the -- we don't have to prove a goddamn thing. We don't have to prove shit; we just have

to allege it.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Los Angeles, California the 26th day of August 1991.

LYNN R. FARNY

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for defendants in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I recognized Armstrong's voice as well, as I attended his deposition in another case. Armstrong is a long-term litigation adversary of some of the defendants, in a case which was settled in 1986.

4. On Friday, August 30, 1991, I received a telephone call from Gerald Armstrong. He stated that he was calling me for Ford Greene, and asked me to provide additional copies of papers and exhibits, claiming that it was difficult to tell the

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identity of persons in some of the pictures that were exhibits.

I declare under the penalties of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed this 3rd day of September, 1991, at Los Angeles, California.

LAURIE J. BARTILSON

DECLARATION OF AUGUST MURPHY

I, AUGUST MURPHY, declare and state:

1. I am over the age of eighteen. I have personal knowledge of the facts set forth below, and if called upon to do so, could competently testify to those facts.

2. On August 19, 1991, I went to the law offices of Ford Greene to pick up service copies of documents in the case of Aznaran et al. v. Church of Scientology of California et al., Case No. CV 88-1786 JMI (Ex).

3. I arrived at Mr. Greene's offices at approximately 3:30 p.m. I looked in the door to the office, and observed a man and a woman sleeping on the floor, underneath a single blanket.

4. I began looking for Mr. Greene. After a few minutes, he came around the side of the building. He explained to me that the copies were not yet ready, and would be done around 5:00 p.m. I told him that I would get a bite to eat and come back, rather than drive all the way back to the city.

5. When I returned to Mr. Greene's office at 5:00 p.m., the door was still locked, and the man and woman were still asleep on the floor. I knocked, and they just shrugged at me. I went outside to the front of the building, and Mr. Greene came out. He said that the papers still were not finished being copied, and that I should come back at 7:30 p.m.

6. When I returned at 7:30, the man who had been sleeping opened the door at my knock. He told me that Mr. Greene had gone to dinner, and that the copier had broken down. I asked

him his name, and he said that it was Gerald Armstrong. He told me to come back at 9:00 p.m.

7. I returned to Mr. Greene's office yet again at 9:00 p.m. Armstrong came in while I was waiting, and said that he was going to Kinko's to pick up the copies. He left, and I waited with Mr. Greene.

8. At approximately 9:35, Armstrong came in with a large box of documents which he took into a back room. Armstrong and Greene then put together a set of documents, which they gave to me.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed at San Francisco, California, the 4th day of September, 1991.

August Murphy

August Murphy

Declaration of Gerald Armstrong

I, Gerald Armstrong, declare:

1. I have been advised by attorney Joseph A. Yanny that he has been sued by one or more Scientology entities, hereinafter referred to as "the organization," for inducing me to breach a settlement agreement I entered into with the organization in December 1986. I am making this declaration to show that this allegation is in every respect untrue.

2. I received a telephone call from Mr. Yanny to my answering machine on or about July 10, 1991. He left a message which simply said, "I need your help." I

called him back at which time he reiterated his request for my help and explained that because of organization machinations (which have been detailed in other declarations by other parties), Rick and Vicki Aznaran, plaintiffs and counter-defendants against the organization had been induced to fire their attorney, Ford Greene, and that Mr. Yanny had come into the case to ensure they had legal representation. Mr. Yanny also expressed during this conversation some personal concerns, which will remain private and confidential between Mr. Yonny and me.

3. I told Mr. Yonny at that time that I would help and that I would travel to Los Angeles on July 12. I asked him for five hundred dollars to cover my expenses, and told him he could consider it as purchase of stock in The Gerald Armstrong Corporation (TGAC). I also counseled Mr. Yonny at that time regarding his personal spiritual difficulties. (TGAC is a California Corporation in which, although it bears my name and I am its active officer,

I own no stock.)

4. I did travel to Los Angeles, did stay at Mr. Yanny's home, did work in his office on July 15 and 16, and did write and execute a declaration on July 16 giving my knowledge of the effect of the December 1986 group settlement agreements on the ability of the Aznarans and other individuals victimized by the organization to obtain proper legal representation. I also discussed with Mr. Yanny literary and

artistic matters, areas of the law, as a copyright and trademark attorney, in whic he has expertise. The majority of my time with Mr. Yanny concerned spiritual matters, an area in which I have expertise.

5. I refer this Court to my declarations of March 15, 1990 and December 25, 1990, and the exhibits thereto. These declarations detail the circumstances at the time of the December 1986 settlement and the many instances subsequently

when I was attacked or threatened by the organization in violation of the settlement agreements. these declarations make it very clear that I consider I have a right to counter the organization's attacks, to speak out against its policy of "fair game" and assaults on the basic rights of individuals, and to assist those whom I would depend on for protection against the organization's legal and extra-legal might and antisocial acts. It is therefore the organization itself which induced me. if I was induced by any human agency to do anything which the organization might consider a breach of the settlement agreement.

6. But more than a desire to protect myself or right the organization's unjust acts towards me, however, I helped Mr. Yanny for the simple reason that he asked. I will do the same for anyone. The organization is aware of this fact because it received my letter of

June 21, 1991, a copy of which will accompany this declaration as Exhibit 1, and acknowledged the letter's receipt in their letter of July 3, 1991, a copy of which will accompany this declaration as Exhibit 2. It is not only the right of all men to respond to requests for help, it is our essence. If I was induced, therefore, to help Mr. Janny, or anyone else, it was our Creator who induced me. Mr. Janny, unlike the organization, was not aware of my dedication to helping my fellow humans, did not know of my June

21, 1991 letter, so acted in innocence.

7. I do not ask for or expect a fee for my help, although generally I do not refuse whatever is given me. I know that I am sustained completely by the Great Coordinator Who sends to me whomever He wants me to help. I therefore cannot be induced by money or whatever anyone can offer me.

I declare under the pain and penalty of perjury under the laws of the State of California that the foregoing is true and

(10)

correct.

Executed this 19th day of July at New York, New York.

G. Armstrong

Gerald Armstrong

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56 HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,)
PLAINTIFF,)
VS.) CASE NO. C 420 153
GERALD ARMSTRONG,)
DEFENDANT.)

RECEIVED
JAN 31 1992
HUB LAW OFFICES

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, DECEMBER 23, 1991

APPPEARANCES:

(SEE APPEARANCE PAGE.)

COPY

HERBERT CANNON, CSR NO. 1923
OFFICIAL REPORTER

APPEARANCES:

FOR THE PLAINTIFF:	MICHAEL LEE HERTZBERG, ESQ. 740 BROADWAY, FIFTH FLOOR NEW YORK, NEW YORK 10009
	WLLIAM T. DRESCHER, ESQ. 23679 CALABASAS ROAD SUITE 388 CALABASAS, CA. 91302
FOR THE DEFENDANT:	TOBY PLEVIN, ESQ. 10700 SANTA MONICA BLVD. SUITE 4-300 LOS ANGELES, CA. 90025
	JOSEPH A. YANNY, ESQ. 1925 CENTURY BOULEVARD SUITE 1260 LOS ANGELES, CA. 90067

LOS ANGELES, CALIFORNIA; MONDAY, DECEMBER 23, 1991; 10:30 A.M.

DEPARTMENT NO. 56 HON. BRUCE R. GEERNAERT, JUDGE

APPEARANCES: (SEE TITLE PAGE.)

(HERBERT CANNON, OFFICIAL REPORTER.)

THE COURT: THE CHURCH OF SCIENTOLOGY VERSUS ARMSTRONG.

STATE YOUR APPEARANCES, PLEASE.

MR. HERTZBERG: MICHAEL LEE HERTZBERG, H-E-R-T-Z-B-E-R-G, FOR THE MOVING PARTY, YOUR HONOR.

MR. DRESCHER: WILLIAM DRESCHER, D-R-E-S-C-H-E-R, ALSO ON BEHALF OF THE MOVING PARTY, YOUR HONOR.

MS. PLEVIN: TOBY L. PLEVIN FOR GERALD ARMSTRONG, YOUR HONOR.

MR. YANNY: JOSEPH YANNY, INTERVENOR OR PROPOSED INTERVENOR.

JUST AS A MATTER OF COURTESY, MR. HERTZBERG DROPPED THAT IN THE AISLEWAY.

MR. HERTZBERG: IT WAS A PIECE OF PAPER THAT WAS THROWN AT ME.

I AM CONCENTRATING ON THIS ORAL ARGUMENT, YOUR HONOR. THIS IS NOT --

THE COURT: DO YOU KNOW WHAT IT IS?

MR. HERTZBERG: NO, YOUR HONOR.

I DO KNOW WHEN I WENT TO READ THE CALENDAR ON THE HALLWAY A GENTLEMAN APPROACHED ME AND SAID HE HAD SOMETHING FOR ME.

MR. YANNY: IT IS A DEPOSITION SUBPOENA, YOUR HONOR.

MR. HERTZBERG: LET ME FINISH.

OPENING UP A WHOLE NEW AREA HERE OF JUDICIAL HEARINGS WHERE THERE IS NO RIGHT TO A JURY, FOR EXAMPLE, AND --

MS. PLEVIN: AS IN THIS CASE.

MR. YANNY: THE PUBLIC DOES NOT HAVE ACCESS.

THE COURT: SO BASICALLY, I AM CONCLUDING, I THINK, THAT 664.6 DOES NOT GRANT THIS COURT JURISDICTION OVER MR. ARMSTRONG PERSONALLY OR JURISDICTION TO, QUOTE, ENFORCE THE AGREEMENT; NOR DOES 127(A)4 IN THAT THERE NEVER WAS AN ORDER BY JUDGE BRECKENRIDGE REQUIRING THE PARTIES TO PERFORM THE AGREEMENT.

MY BELIEF IS THAT HAD HE BEEN ASKED TO DO SO, HE WOULD HAVE DECLINED EVEN ON PAIN OF HAVING THE SETTLEMENT BLOW UP BECAUSE THAT IS JUST ANOTHER FOUR LAWSUITS WAITING TO HAPPEN, IN MY EXPERIENCE, WHEN YOU HAVE AN AGREEMENT LIKE THIS.

MR. HERTZBERG: I TAKE IT YOUR HONOR IS DENYING OUR MOTION, THEN, ON THE BASIS OF LACK OF JURISDICTION?

THE COURT: I THINK THAT IS WHAT IT COMES DOWN TO.

SO THE MINUTE ORDER WILL SHOW THAT THE MOTION IS DENIED.

MR. YANNY: THERE IS ONE OTHER MATTER, YOUR HONOR.

THE COURT: THIS FIRST MOTION IS DENIED ON THE BASIS THAT JUDGE BRECKENRIDGE DID NOT SIGN AN ORDER OR MAKE AN ORDER REQUIRING THE PARTIES TO PERFORM THE DOCUMENT ENTITLED "MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT"; NOR DID JUDGE BRECKENRIDGE SIGN ANY ORDER RESERVING JURISDICTION INS THE COURT IN THIS CASE TO ENFORCE SAID AGREEMENT.

THE COURT IS AWARE THAT THE PARTIES STIPULATED

IN THERE, QUOTE, JOINT STIPULATION OF DISMISSAL, END QUOTE, PAGE 2, LINES 5 AND 6, QUOTE, THIS COURT SHALL RETAIN JURISDICTION AND MAY REOPEN THIS CASE AT ANY TIME FOR THE PURPOSE OF ENFORCING SAID AGREEMENT, END QUOTE.

AND, FURTHER, IT APPEARS THAT JUDGE BRECKENRIDGE MAY HAVE BEEN AWARE OF THAT AGREEMENT BETWEEN THE PARTIES; BUT IT NEVERTHELESS, APPEARS THAT JUDGE BRECKENRIDGE WAS NOT ASKED TO AND DID NOT ORDER THE PARTIES TO PERFORM THE AGREEMENT; NOR DID HE ORDER CONTINUING JURISDICTION AS THE PARTIES EVIDENTLY DESIRED HIM TO DO.

THE MOVING PARTY ASSERTS THAT THIS COURT HAS JURISDICTION TO GRANT THIS MOTION PURSUANT TO CCP 127(A)4.

ARE YOU RELYING ON CCP 127(A)4?

MR. HERTZBERG: AND ALSO 664.6.

THE COURT: WE'LL GET TO THAT IN A MINUTE.

DO YOU HAVE IT THERE? MAY I SEE IT?

MR. HERTZBERG: WE HAVE IT IN TWO PLACES. WE HAD IT MISCITED, YOUR HONOR, IN ONE PAPER.

MS. PLEVIN: THE TEXT OF 127(A)4, YOUR HONOR, IS ON PAGE 2 OF MR. ARMSTRONG'S SUPPLEMENTAL OPPOSITION TO THE JURISDICTIONAL ISSUE.

MR. HERTZBERG: I THINK WE CITED IT AS -- I BELIEVE THIS IS THE CORRECT TEXT.

THE COURT: THAT IS WHAT THREW ME A LITTLE BIT.

SO YOU CITED IT AS 128(A)4; IN ANY EVENT, IT PROVIDES EVERY COURT "SHALL HAVE THE POWER TO DO ALL THE FOLLOWING ... "

SO BACK IN THE MINUTE ORDER; HOWEVER, IT

REALLY IS 128(A)4. SO MAKE THAT 128(A)4; HOWEVER, CCP 128(A)4 RELATES TO COMPELLING OBEDIENCE TO ITS JUDGMENTS, ORDERS AND PROCESS. AND AS INDICATED, THERE IS NO SUCH JUDGMENT OR ORDER HEREIN.

DURING THE PROCEEDINGS MOVING PARTY ALSO RELIED UPON SECTION 664.6 OF THE CODE OF CIVIL PROCEDURE; HOWEVER, IT APPEARS THAT ON DECEMBER 11, 1986 THIS ACTION WAS DISMISSED WITH PREJUDICE. THEREFORE, THIS COURT LACKS JURISDICTION UNDER 664.6 OF THE CODE OF CIVIL PROCEDURE SINCE THIS SECTION CEASES TO BE A JURISDICTIONAL BASIS AFTER ENTRY OF JUDGMENT OR JUDGMENT OF DISMISSAL FOR THE REASONS AND ON THE GROUNDS SET FORTH IN THE NOTES OF THE OFFICIAL COURT REPORTER.

NOW, TURNING TO THE YANNY MOTION.

MR. HERTZBERG: I JUST WANTED THE RECORD TO REFLECT THAT WE OBJECT TO THIS GROUND FOR DENYING THE MOTION, FOR DISMISSING THE MOTION, JUST FOR THE RECORD SO THE RECORD IS ABSOLUTELY CLEAR.

THE COURT: ALSO ON CALENDAR THE MOTION OF JOSEPH A. YANNY FOR LEAVE TO INTERVENE IN THE PENDING ACTION AND FOR ACCESS TO SEALED FILES.

I AM GOING TO CONSIDER THIS NOT AS A MOTION TO INTERVENE AS A PARTY PLAINTIFF OR DEFENDANT, BUT A MOTION SEEKING ACCESS TO DOCUMENTS SEALED UNDER COURT ORDER.

AND THAT ELIMINATES A LOT OF THE ARGUMENT AS TO THE TECHNICALITIES OF FILING OF A COMPLAINT IN INTERVENTION AS SUCH.

ACTUALLY, IN YOUR PAPERS, MR. YANNY, YOU ALSO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56 HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,)
PLAINTIFF,)
)
VS.) CASE NO. C 420 153
) REPORTER'S CERTIFICATE
GERALD ARMSTRONG,)
DEFENDANT.)

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, HERBERT CANNON, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 77, COMPRISE A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON DECEMBER 23, 1991.

DATED THIS 6TH DAY OF JANUARY, 1992.

CSR NO. 1923

OFFICIAL REPORTER

PENGAD/WEST FRESNO CA 93725

FILED
MAR - 5 1992
HOWARD HANSON
MARIN COUNTY CLERK
By A. Cooper, Deputy

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
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6255 Sunset Boulevard
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Hollywood, California 90028
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	Case No. 152229 TEMPORARY RESTRAINING ORDER

Plaintiff's application for a Temporary Restraining Order was heard by the Court on this 3rd day of March, 1992, and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. Pending the hearing on Plaintiff's Motion for a Preliminary Injunction, to be heard by the Court on March 20, 1992 at 9:00 a.m., Defendant Gerald Armstrong ("Armstrong" or "Defendant"), his agents ~~and all those acting in concert with him,~~ are hereby temporarily enjoined from violation of that certain

Settlement Agreement ("Agreement") dated December 6, 1986, including the following:

2. Armstrong is restrained from violating Paragraph 7(d) which prohibits Armstrong from creating or publishing books or magazine articles, disclosing his experiences with Scientology, and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations listed in Paragraph 1 of the Agreement ("Scientology organizations") affiliated therewith, disclosing documents identified in Exhibit A to the Settlement Agreement, including films, tapes, photographs, recordings or variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the Scientology organizations;

3. Defendant is restrained from violating the provisions of Paragraph 7(g) which prohibits Defendant from voluntarily assisting or cooperating with any person adverse to Scientology in any proceeding against any of the Scientology organizations, or from cooperating in any manner with any organizations aligned against Scientology;

4. Defendant is restrained from violating the provisions of Paragraph 7(h) which prohibits Defendant from testifying or participating in judicial or administrative proceedings adverse to Scientology or any of the Scientology organizations unless compelled to do so by subpoena or lawful process;

5. Defendant is restrained from violating the provisions of Paragraph 10, which prohibits Defendant from assisting or advising anyone, including individuals, partnerships, associations, corporations, or governmental entities contemplating any claim or

engaged in litigation or involved in or contemplating any activity adverse to the interests of any of the Scientology organizations;

6. Defendant is restrained from violating the provisions of Paragraph 18(d), which prohibits Defendant from disclosing the contents of the Agreement;

7. Nothing in this Order shall be construed to prohibit Armstrong from working in the employ of, or as an independent contractor for, Ford Greene on matters not involving the Church of Scientology International or any of the Scientology organizations.

DATED: 3/5, 1992.

MICHAEL B. DUFFICY

JUDGE OF THE SUPERIOR COURT

Andrew H. Wilson
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235 Montgomery Street
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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

FILED
MAR 24 1992
HOWARD HANSON
MARIN COUNTY CLERK
By A. Cooper, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

Case No. 152229

ORDER RE DEFENDANT'S MOTION TO DISMISS OR STAY OR TRANSFER TO LOS ANGELES SUPERIOR COURT

Defendant's motion for a change of venue was heard on March 20, 1992 at 9:00 a.m. in the above-entitled Court. Plaintiff was represented by Wilson, Ryan and Campilongo, Andrew H. Wilson appearing, and by Bowles and Moxon, Laurie J. Bartilson appearing. Defendant was represented by Ford Greene.

Whereas, the Honorable Bruce R. Geernaert of the Los Angeles Superior Court, having replaced Paul G. Breckenridge, Jr., in Church of Scientology of California v. Gerald Armstrong, Los Angeles Superior Court Case No. C 420 153, narrowly ruled on December 23, 1991 that pursuant to Code of Civil Procedure sections 127(a)(4) and 664.4 he did not have jurisdiction to enforce the Mutual Release of All Claims and Settlement Agreement executed December 6, 1986; and

Whereas, Paragraph 20 of said Agreement is nevertheless effective as a forum selection clause which this court may enforce under Smith v. Superior Court (1986); and

Having reviewed the written arguments and evidence submitted by the parties, and having heard the arguments of counsel,

It is therefore **ORDERED** as follows:

1. Defendant's motion to transfer the file in Marin County Superior Court Case No. 152229 is **GRANTED**.

a. It is **FURTHER ORDERED** that the file herein shall be transferred to James H. Dempsey, Executive Officer and Clerk of the superior court of Los Angeles, 111 North Spring Street, Los Angeles, California, 90012 immediately after the expiration of twenty (20) days of the date of this Order as required by Code of Civil Procedure sections 399 and 400, the parties hereto waiving the written notice required by Code of Civil Procedure Section 400.

b. It is **FURTHER ORDERED** that pursuant to Code of Civil Procedure section 399 Plaintiff shall pay the costs of transfer of the file to Los Angeles Superior Court.

c. It is **FURTHER ORDERED** that this Court shall retain jurisdiction to determine, upon noticed motion, whether Defendant should be awarded fees and costs in connection with the bringing of the Motion to Transfer and to enforce, if necessary, Paragraphs 2.b. through f. until the earlier of May 4, 1992 or the date a preliminary injunction motion is appealed or denied in the Los Angeles Superior Court.

2. This Court's order of March 5, 1992 is hereby extended through and including the earlier of May 4, 1992 or further order of the court. ~~or the date that a preliminary injunction is granted or denied by the Los Angeles Superior Court~~. Defendant Gerald Armstrong and his agents are hereby enjoined from violation of that certain Settlement Agreement ("Agreement") dated December 6, 1986, including the following:

FG

a. Armstrong is restrained from violating Paragraph 7(d) which prohibits Armstrong from creating or publishing books or magazine articles, disclosing his experiences with Scientology, and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations listed in Paragraph 1 of the Agreement ("Scientology organizations") affiliated therewith, disclosing documents identified in Exhibit A to the Settlement Agreement, including films, tapes, photographs, recordings or variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the Scientology organizations;

b. Defendant is restrained from violating the provisions of Paragraph 7(g) which prohibits Defendant from voluntarily assisting or cooperating with any person adverse to Scientology in any proceeding against any of the Scientology organizations, or from cooperating in any manner with any organizations aligned against Scientology;

c. Defendant is restrained from violating the provisions of Paragraph 7(h) which prohibits Defendant from testifying or participating in judicial or administrative proceedings adverse to Scientology or any of the Scientology organizations unless compelled to do so by subpoena or lawful process;

d. Defendant is restrained from violating the provisions of Paragraph 10, which prohibits Defendant from assisting or advising anyone, including individuals, partnerships, associations, corporations, or governmental entities contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any of the Scientology organizations;

e. Defendant is restrained from violating the provisions of Paragraph 18(d), which prohibits Defendant from disclosing the contents of the Agreement;

f. Nothing in this Order shall be construed to prohibit Armstrong from working in the employ of, or as an independent contractor for, Ford Greene on matters not involving the Church of Scientology International or any of the Scientology organizations.

DATED 3/24, 1992.

MICHAEL B. DUFFICY
JUDGE OF THE SUPERIOR COURT

Approved as to form:

Ford Greene, Esq.
Attorney for Defendant Gerald Armstrong

13:33

2167

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: 3/27/92 COURT MET AT ________ DEPARTMENT NO. 4

PRESENT: HON. Michael B. Duffy, JUDGE A Cooper, DEPUTY CLERK

________, REPORTER ________, BAILIFF

TITLE:	COUNSEL:
Church of Scientology of International vs. Gerald Armstrong, et. al.	Ex Parte

NATURE OF PROCEEDINGS: Order Regarding Further Hearings & Signing of Further Documents

ACTION NO. 152229

The above entitled case came before the Court on Motions, 2 of which were Motion to Transfer to Los Angeles County & Motion for Preliminary Injunction.

The Court granted the Motion to Tranfer and granted an extention of 45 days on the Preliminary Injunction. All remaining motions were to be heard in Los Angeles County.

Pursuant to that order, no further Orders are to be submitted to this Court and there will be no further hearings scheduled regarding this matter.

cc: A. Wilson
L. Bartilson
F. Greene
Intervener, Mr Berry

MINUTES

3110-CC25

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

2168

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if pre

Church of Scientology, International
vs.
Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1a

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.
Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1b

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of $70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

DEPT. 88

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

2171

Date: May 28, 1992
Honorable **Ronald M. Sohigian**, Judge
1c

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

RONALD M. SOHIGIAN
Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,
Plaintiff and Respondent,
v.
GERALD ARMSTRONG,
Defendant and Appellant.

No. B069450
(Super.Ct.No. BC052395)

COURT OF APPEAL - SECOND [illegible]
FILED
[illegible] 1994
JO[illegible]

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan & Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard, Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee Hertzberg for Plaintiff and Respondent.

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number

of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid $800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.[1]

---

[1] "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's

argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part: "Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons

referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶] Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

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DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA

employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*

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*Assigned by the Chairperson of the Judicial Council.

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STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE: 05/16/94

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FILED
CLERK, U.S. DISTRICT COURT
AUG 12 1991
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CHURCH OF SCIENTOLOGY INTERNATIONAL,

Plaintiff,

vs.

C. PHILLIP XANTHOS; ALAN LIPKIN; MARCUS OWENS; MARVIN FRIEDLANDER; S. ALLEN WINBORNE; ROBERT BRAUER; JOSEPH TEDESCO; CHARLES RUMPH; RAYMOND JUCKSCH; MELVYN YOUNG; CARL CORSI; GREGORY ROTH; WILLIAM CONNETT; KEITH ALAN KUHN; CHARLES JEGLIKOWSKI; MELVIN BLOUGH; RODERICK DARLING; and DOES 1 - 200,

Defendants.

No. 91 4301 SVW(Tx)

COMPLAINT FOR DAMAGES FOR AND INJUNCTIVE RELIEF FROM:

1. FOURTH AMENDMENT VIOLATIONS;
2. FIRST AMENDMENT VIOLATIONS;
3. DUE PROCESS VIOLATIONS UNDER THE FIFTH AMENDMENT; AND
4. EQUAL PROTECTION VIOLATIONS UNDER THE FIFTH AMENDMENT

JURY TRIAL DEMANDED

JURISDICTION AND VENUE

1. As this action seeks damages for violations of the United States Constitution brought under the authority of Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that jurisdiction is not founded solely on diversity of citizenship and the claims arose in this judicial district. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) in that this is a civil action in which all the defendants are or were employees of a United States agency, some of whom are residents of this judicial district, which is the judicial district in which plaintiff resides and in which the causes of action set forth arose.

PARTIES

3. Plaintiff Church of Scientology International ("the Church") is a not for profit religious corporation organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. In accordance with the ecclesiastical policies of the Scientology religion, plaintiff is the Mother Church of the Scientology religion, an internationally recognized religion engaged solely in spiritual, charitable, humanitarian and community-oriented endeavors intended to enhance adherents' spiritual knowledge of themselves and their Creator. The Scientology religion has more than 8 million members and Scientology Churches, Missions and groups exist in 90 nations around the world.

4. Except for three who have retired from government service since performing the acts hereinafter averred, the defendants are, and at all relevant times were, employees of the Internal Revenue Service ("IRS"). The matters averred in this Complaint are largely drawn from information only recently discovered by the Church in the course of Freedom of Information Act ("FOIA") litigation.

5. As the conduct which gives rise to the Church's claims of constitutional violations occurred within different divisions and offices of the IRS, the defendants are grouped within their respective divisions for the purposes of the following identifying averments:

A. Los Angeles Criminal Investigation Division.

i. Defendant Philip Xanthos ("Xanthos") is, and at all relevant times was, a Branch Chief of the Los Angeles Criminal Investigation Division of the IRS ("LA CID"). Upon information and belief, Xanthos resides in this judicial district.

ii. Defendant Alan Lipkin ("Lipkin") is, and at all relevant times was, a Group Manager within LA CID. Upon information and belief, Lipkin resides in this judicial district.

B. National Office Exempt Organizations.

i. Defendant Marcus Owens ("Owens") is currently the Director of the IRS National Office Exempt Organizations ("EO") Technical Division, and was, at all relevant times an official of the EO Technical Division. Upon information and belief, Owens resides in the State of Maryland.

ii. Defendant Marvin Friedlander ("Friedlander") is, and at all relevant times was, an IRS Senior Conferee Reviewer in the EO Technical Division. Upon information and belief, Friedlander resides in the State of Maryland.

iii. Defendant S. Allen Winborne ("Winborne") was at all relevant times until approximately 1987 IRS Assistant Commissioner for Employee Plans and Exempt Organizations. Upon information and belief, Winborne resides in the State of Maryland.

iv. Defendant Robert Brauer ("Brauer") was at all relevant times from approximately 1987 to and including approximately December, 1990, IRS Assistant Commissioner for Employee Plans and Exempt Organizations. Since in or about January, 1991, Brauer has been the IRS District Director in Pittsburgh, Pennsylvania. Upon information and belief, Brauer resides in the Commonwealth of Pennsylvania.

v. Defendant Joseph Tedesco ("Tedesco") was at all relevant times until approximately 1987, Chief of the National Office Exempt Organizations Technical Division. Since in or about 1987, Tedesco has been in retirement. Upon information and belief, Tedesco resides in the Commonwealth of Virginia.

vi. Defendant Charles Rumph ("Rumph") was at all relevant times until approximately 1986, an attorney in the Tax Litigation Division, Office of Chief Counsel at the National Office. Although he did not work in EO, plaintiff is informed and believes that Rumph worked in conjunction with the other EO defendants in doing the acts hereinafter averred. Since in or about 1986, Rumph has been in retirement. Upon information and belief, Rumph resides in the District of Columbia.

vii. Defendant Roderick Darling ("Darling") is, and at all relevant times was, an IRS tax law specialist in the EO Technical Division. Upon information and belief, Darling resides in the State of Maryland.

C. Los Angeles Exempt Organizations Division.

i. Defendant Raymond Jucksch ("Jucksch") is, and at all relevant times was, a Group Manager within the Los Angeles Exempt Organizations Division of the IRS ("LA EO"). Upon information and belief, Jucksch resides in this judicial district.

ii. Defendant Melvyn Young ("Young") is, and at all relevant times was, a Revenue Agent within LA EO. Upon information and belief, Young resides in this judicial district.

iii. Defendant Carl Corsi ("Corsi") was at all relevant times to and including

July, [illegible]89, a Revenue Agent within LA EO. Since in or about July, 1989, Corsi has been in retirement. Upon information and belief, Corsi resides in this judicial district.

D. Los Angeles District Counsel Office.

i. Defendant Charles Jeglikowski ("Jeglikowski") is, and at all relevant times was, an attorney within the IRS District Counsel's office located in Thousand Oaks, California. Upon information and belief, Jeglikowski resides in this judicial district.

ii. Defendant Gregory Roth ("Roth") is, and at all relevant times was, an attorney within the IRS District Counsel's office located in Thousand Oaks, California. Upon information and belief, Roth resides in this judicial district.

E. Los Angeles District Office.

i. Defendant William Connett ("Connett") was at all relevant times to and including January, 1986, District Director of the Los Angeles District Office of the IRS. Since in or about 1987, Connett has been the IRS Representative in Paris, France, where, on information and belief, he now resides.

F. IRS National Office Internal Security Division.

i. Defendant Keith Alan Kuhn ("Kuhn") is, and at all relevant times was, Chief of the

Investigations Branch of the Internal Security Division of the Office of the Chief Inspector of the IRS. Upon information and belief, Kuhn resides either in the State of Maryland or the Commonwealth of Virginia.

G. St. Petersburg, Florida Exempt Organizations Division.

i. Defendant Melvin Blough ("Blough") is, and at all relevant times was, a Revenue Agent within the Exempt Organizations Division of the St. Petersburg, Florida office of the IRS. Upon information and belief, Blough resides in the state of Florida.

6. Upon information and belief, IRS employees other than those named as defendants in this action performed acts which are unlawful and unconstitutional in connection with the facts set forth in this complaint. The Church will seek leave of Court to amend this complaint when the IRS employees not named as defendants, but whose conduct warrants their inclusion as defendants in this action, are identified.

NATURE OF PLAINTIFF'S CLAIMS

7. By this action, the Church seeks damages for violations of its First, Fourth, and Fifth Amendment rights arising from the conduct of the defendants and others within the Internal Revenue Service. While this action focuses on recent events, it is the culmination of three decades of IRS coercion in violation of the Free Exercise Clause of the First Amendment, discriminatory treatment in violation of the

Establishment Clause of the First Amendment and the Equal Protection component of Due Process under the Fifth Amendment, as well as the denial of procedural Due Process rights in violation of the Fifth Amendment, and actions in violation of the Church's Fourth Amendment rights.

8. Although the IRS has withheld the vast majority of documents requested by Churches of Scientology under the FOIA, the limited FOIA information recently discovered by the Church through the production of documents and testimony demonstrates the actionable conduct hereinafter averred. This action, moreover, does not arise in a vacuum. It is an outgrowth of IRS conduct that includes:

a. Efforts by the IRS' Chief Counsel's office to persuade at least one municipal authority to find "local statutes and ordinances available as tools to curtail or close down" Scientology Churches;

b. Employment of "plants" to infiltrate Scientology Churches to obtain copies of Church records;

c. Recommendations of the IRS Chief Counsel that "defining church in regulations is one method to attack Scientology," which recommendation was followed by the formulation of such a definition in General Counsel Memorandum 36078 entitled "Church of Scientology" (later promulgated as Revenue Ruling 76-415);

d. Targeting the Church of Scientology as "subversive," and conducting non-tax-related surveillance and intelligence gathering that a United States Senate Subcommittee would later find was "used to stigmatize, to set a group of individuals and organizations apart as somehow inherently suspect ..." and which a Senate Select Committee found to be "an effort to employ tax weapons for essentially nontax purposes";

e. IRS documents which refer to the Scientology religion as "religious bunco" and a "grab-bag of philosophical voodooism," as well as IRS tape recordings of witness interviews in which defendants Young, Corsi and Roth referred to Scientologists as "crazy devotees," characterized Scientology's religious services as a "dog and pony show," compared adherence to the Scientology faith to drug addiction, and called the religion itself a "facade"; and

f. Encouragement given by Corsi, Young and Roth to individuals pursuing civil cases involving claims for damages against plaintiff and other Scientology Churches.

9. The claims for relief asserted in this action arise from the demise of a two-year criminal investigation of plaintiff, other Scientology Churches, and individual Scientologists that produced no indictments, no charges, and nothing more than the refusal of the Department of Justice to take any action with regard to that lengthy investigation. In the aftermath of that investigatory debacle, defendants, as is

more fully averred later in this complaint, embarked upon a course of conduct which has included:

a. EO employees demanding documents from plaintiff and other Scientology Churches ostensibly to evaluate applications for exemption under 26 U.S.C. § 501(c)(3), while in reality making such demands so that those documents could be turned over to IRS criminal investigators in violation of the Fourth Amendment;

b. Inauguration of nationally and locally coordinated campaigns to single out plaintiff and other Churches of Scientology as targets for tax inquiries because they were Churches of Scientology, and to use such inquiries as a means to generate otherwise unavailable tax liabilities such as under the Federal Insurance Contribution Act and the Federal Unemployment Tax Act in violation of the Establishment and Free Exercise Clauses of the First Amendment and the Equal Protection component of the Due Process Clause of the Fifth Amendment; and

c. Embarking on a nationally and locally coordinated campaign of collections activity which arbitrarily and capriciously freezes and attempts to freeze bank accounts of plaintiff and other Scientology Churches for alleged tax obligation of still other Scientology Churches without notice and without any opportunity to be heard before seizing plaintiff's property in violation of the Due Process Clause of the Fifth Amendment.

FIRST CLAIM FOR RELIEF

(For First, Fourth and Fifth Amendment Violations by Defendants Xanthos, Lipkin, Owens, Friedlander, Darling, Winborne, Tedesco, Rumph, Jucksch)

10. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 9, inclusive.

11. The Scientology religion has been in existence for nearly four decades. From its earliest days, it has been a target of IRS scrutiny and hostility. After years of controversy and litigation, the IRS agreed with various Churches of Scientology to conduct an examination of a representative church and issue an exemption ruling based upon that examination for the representative church and all others similarly situated.

12. The IRS, for 25 consecutive days in March and April 1975, conducted an exhaustive examination of the Church of Scientology of Hawaii ("the Hawaii Church"), addressing every aspect of that church's operations, including Scientology beliefs and practices. As a result of that examination, Church of Scientology of Hawaii and twelve other Scientology churches were granted exemptions under 26 U.S.C. § 501(c)(3).

13. The grant of exemption to the Hawaii Church followed an unsuccessful attempt by the IRS to employ a litigation tactic appropriately described as "harass and moot" to avoid judicial adjudication of the exemption issue. When the Hawaii Church

filed suit contesting the IRS' 1969 denial of exemption, the IRS tendered a refund of the taxes to avoid an unfavorable court decision. When the Church refused the refund and pressed for a judicial determination, the IRS moved to dismiss claiming that the issue had been rendered moot. After the Ninth Circuit rejected this litigation ploy, the IRS settled the case and later granted exemption. The IRS, however, continued to resist applications for exemption by Scientology churches despite the fact that its only thorough, comprehensive examination of any church had resulted, begrudgingly, in more than a dozen exemptions.

14. Exemption applications for plaintiff Church of Scientology International, Church of Spiritual Technology and Religion Technology Center were filed with the Internal Revenue Service in 1983. These exemption applications were forwarded to the IRS National Office by the local offices where they were filed. Responsibility for the exemption applications resided with defendants Owens, Friedlander, and Tedesco of the National Office EO working in conjunction with defendant Rumph of the Office of the Chief Counsel. EO requested additional information of the filing entities. Discussions between Church counsel and the IRS personnel processing the applications began with regard to the IRS' requests for additional information, and at the request of those defendants the applicants provided further information to the IRS based on the belief that the newly formed churches all qualified for exemption and that the IRS was acting in good faith in the negotiations. EO letter requests to plaintiff and the other applicants dated July 30

and October 5, 1984 and January 18 and April 22, 1985 requested the applicants comment on specific allegations made by LA CID informants that were at the heart of the ongoing CID investigation. FOIA records and discovery in FOIA litigation reveal a continuous flow of information from EO to LA CID.

15. It is now clear, however, that defendants and the IRS were not dealing in good faith, but rather, were merely asking for and receiving voluminous financial and other records from plaintiff and the other churches without any intention of ever granting any section 501(c)(3) exemptions and as an unlawful means of obtaining data for LA CID. The use of the exemption process to obtain information for a criminal investigation deprived plaintiff of its rights guaranteed by the First, Fourth and Fifth Amendments to the United States Constitution, and violated specific IRS rules designed to protect those rights. The Internal Revenue Manual contains specific provisions which require EO to "immediately suspend" an inquiry if EO learns that "an assigned case involves a taxpayer who is the subject of a criminal investigation." The EO agents responsible for plaintiff's exemption application did not suspend the civil proceeding, but instead continued to use it as a means for gathering information for CID.

16. Between 1984 and 1986, LA CID conducted an extensive criminal investigation of plaintiff, other Scientology churches, and individual Scientologists, under the auspices of defendant Connett, the then-District Director, defendant Xanthos, the LA CID Branch Chief and defendant Lipkin, the assigned LA CID Group Manager. That investigation included the

use of mail covers, paid informants, summonses to dozens of financial institutions and church members, and infiltration of Scientology's ecclesiastical hierarchy. The infiltration of the Church was planned as an undercover operation by the LA CID along with former Church member Gerald Armstrong, who planned to seed church files with forged documents which the IRS could then seize in a raid. The CID actually planned to assist Armstrong in taking over the Church of Scientology hierarchy which would then turn over all Church documents to the IRS for their investigation. The CID further coordinated this plan with the Ontario Provincial Police in Canada, through direct contacts and exchange of information, hoping that through simultaneous assaults the "momentum of . . . charges will cause [Scientology] to collapse." Thus, the documents being channelled from EO to CID were being used for the unlawful purpose of forwarding criminal investigations in both the United States and in Canada.

17. That criminal investigation, the results of which were ultimately rejected in full by the Department of Justice, was doomed from its inception because it was based upon a faulty premise -- that plaintiff and the other Churches were engaging in criminal conduct (conspiracy to interfere with the collection of taxes) by the mere fact that they had applied for section 501(c)(3) exemptions. In other words, at the time that EO was allegedly processing the exemption applications, the IRS had already made a determination that the exemption applications were criminal instruments because the applying churches had already been prejudged as non-exempt.

18. The IRS personnel charged with responsibility for the exemption applications -- defendant Friedlander, and his superiors Owens, Tedesco and Winborne -- were fully aware of the ongoing criminal investigation, yet despite the fact that the Fourth and Fifth Amendment and IRS written procedures mandate that all civil IRS proceedings concerning a given tax period be suspended during the time in which a criminal investigation of that same period is in progress, EO personnel continued to request and receive information and documents from plaintiff and the other Churches and delivered such information and documents to defendants Xanthos, Lipkin and the other LA CID personnel conducting the criminal investigation.

19. In late July 1984, the Church learned through the media that LA CID had initiated a criminal investigation relating to Scientology organizations and individuals. Leaks to the media regarding the CID investigation had already resulted in unfavorable and harmful media reports, prior to the time when the organizations and individuals became aware that they were under investigation. In response to one such article, Church counsel contacted defendant Connett who confirmed that an investigation of Scientology's founder, L. Ron Hubbard, and another Scientologist was in progress, but who expressly misrepresented to counsel that the criminal investigation was separate and distinct from the ongoing exemption application process, and encouraged the Church to continue the application process. Connett, with the assent of defendants Friedlander and Winborne, told the Church's attorneys that the CID investigation did not directly involve

any of the applicants and might not lead to charges being filed. He stated that in that case, it would not make sense to drop the existing team which was developing the exemption applications. The truth of the matter was that defendants Friedlander and Tedesco were turning material over to LA CID, either directly, through Connett, or through the Los Angeles Exempt Organizations Division (which was staffed by defendants Jucksch, Corsi, and Young).

20. Connett did not merely misrepresent the status of the CID investigation to the Church. He also set into motion the coordination between the National Office employees processing the exemption applications, and the agents of the CID. In January 1985, Friedlander contacted Xanthos and his superior, CID Chief Ronald Saranow, at the suggestion of defendant Connett for the purpose of obtaining information from CID's files. Friedlander informed defendant Tedesco of his plan to travel to Los Angeles along with defendant Rumph, for the purpose of reviewing CID's materials as well as CID's "draft prosecution letter." In order to prevent plaintiff and the other churches from learning of the CID investigation, Friedlander proposed that EO and CID could mutually coordinate when or if any CID material would be included in any applicant's administrative file to preclude premature disclosure. Tedesco approved of the trip, as did defendant Winborne, who stated they should leave when ready.

21. In approximately February 1985, during the course of EO's information gathering on behalf of LA CID, defendants Friedlander and Rumph traveled to Los Angeles and met with

defendant Lipkin to acquire information about the criminal investigation and to learn of the criminal investigators' areas of interest so that EO and LA CID might work together more efficiently. At that time, Friedlander was provided with a draft copy of a "Special Agent's Report" ("SAR") prepared by the LA CID defendants, Xanthos and Lipkin, requesting prosecution of various Scientology Churches, entities, members and their counsel, and setting forth the theories of prosecution. Friedlander thereafter sought information from plaintiff and the other applicants relating to areas addressed in the draft SAR, representing that the information was necessary for EO's evaluations of the pending exemption applications. The information requested by Friedlander was supplied to EO, and thereafter forwarded by EO to LA CID to assist in the criminal investigation. Friedlander kept defendants Owens, Tedesco and Winborne informed regarding the provision of information by EO to LA CID. Moreover, Friedlander, knowing that he should have suspended the EO examination in light of the pending CID investigation, consulted agents of LA CID as well as Tedesco, Winborne and others concerning the requirement of suspending the EO proceeding. Friedlander was specifically directed to continue the exemption process, and he did so.

22. Following Friedlander's return from viewing CID's files in Los Angeles, EO employee Roderick Darling communicated with Friedlander regarding the use of the CID materials. Darling suggested that EO could pose questions to the Church based on certain documents in CID's files, since it would not involve reliance on any testimony solicited by CID and,

therefore, would not expose the IRS to the charge that the IRS EO function had allied itself with CID or was tainted by CID's conspiracy theories. Darling also informed Friedlander that CID hoped that EO would somehow be able to extract information from the Church, and that EO would be able to turn up something which CID had not been able to. In March 1985, defendants Lipkin and Connett attended a meeting at the National Office to discuss the pending exemption applications with defendants Friedlander, Winborne, Rumph and Tedesco. They discussed the possible timing of denials of exemption to coincide with the CID's prosecution. Connett also assured the EO defendants that CID would provide them with the Special Agent's Report when it was completed.

23. Numerous instances of the provision of information from defendants responsible for EO functions to defendants responsible for LA CID functions are presently known to plaintiff through FOIA requests, FOIA litigation and discovery in such actions, and numerous other instances of such unlawful acts are believed to exist but have not yet been discovered by plaintiff. The IRS has even attempted to thwart such Freedom of Information Act discoveries by improperly withholding documents and portions thereof concerning the unlawful collusion between EO and CID which should have been released. The IRS has improperly asserted that records revealing the collusion were not discloseable based on the IRS' "deliberative process privilege," and thereby seeking to keep its unlawful acts from coming to view.

24. To prevent the revelation of the unlawful and

unconstitutional collusion between EO and LA CID, Friedlander destroyed copies of memoranda and notes taken during his visits to LA CID, and on information and belief, notes of subsequent telephone communications with Lipkin and others. Friedlander also destroyed documents he requested from LA CID because he did not want to place them in the application files and thereby be required to supply them to the applicant churches. Darling also supplied documents obtained during EO's examination to LA CID for its use in its criminal investigation and received a copy of the draft SAR.

25. The initial conduit for transmitting information and documents from the Church through the EO in Washington, D.C. (defendants Owens, Tedesco, Rumph, Darling and Friedlander) to LA CID (defendants Xanthos and Lipkin, under the supervision of defendant Connett) was the Los Angeles Exempt Organizations Division (defendants Jucksch, Corsi and Young). At some time during the concurrent EO examination and LA CID criminal investigation, defendant Connett agreed to assume personal responsibility for transmitting the material from EO to LA CID.

26. Plaintiff and the other applicant Churches were unaware that EO and LA CID were colluding with one another behind the scenes, and continued to cooperate with EO personnel in conducting the examinations which the IRS represented were being conducted in good faith. Any potential suspicions by plaintiff or the other Churches that the information gathering may not have been completely for civil purposes, were allayed by the receipt of a letter to CST dated July 26, 1985, written by Friedlander and Darling, in which they stated: "We assure you

that our questions (in previous correspondence) have heretofore been solely directed at developing the applications to the point where your purpose and activities have been sufficiently described in accordance with the standards for issuing rulings ...." These representations were fraudulent, as the SAR, written 2 months earlier, unequivocally called for denial of tax exemption.

27. Notwithstanding that representation, EO continued to gather information for use by LA CID. A copy of the SAR obtained in FOIA litigation makes it clear that the purpose of the defendants who participated in the EO - LA CID collusion was for defendants to combine their efforts to create "another round of denial of exempt status," a circumstance which the SAR states was intended to cause "a final halt to" and "the ultimate disintegration of" the Scientology religion.

28. In September of 1985, plaintiff and the other applicants learned that LA CID had forwarded a recommendation for criminal prosecution to the IRS LA District Counsel's office, and that at least RTC and CST were named as targets of the investigation. On information and belief, plaintiff was also a target of the criminal investigation. By December 1985, the District Counsel's office had concluded that the SAR did not warrant immediate prosecution and forwarded the matter to the Justice Department with a request that an investigative grand jury be convened.

29. The request for a grand jury coincided with the January 7, 1986 issuance of letters by the IRS National Office proposing the denial of exempt status to plaintiff, RTC and

CST. Defendant Friedlander made the decision to issue those letters at that time. At the same time, January of 1986, defendants Jucksch, Corsi and Young, on behalf of the IRS' LA Exempt Organizations Division, prepared to launch a third prong of attack (to coincide with the grand jury request and the proposed exempt status denials) in the form of examinations conducted by LA EO. Those examinations were an outgrowth of the stalled LA CID investigation, and LA EO defendant Corsi had held a series of meetings during the course of the criminal investigation with LA CID defendant Xanthos.

30. The three prongs of attack which defendants had coordinated to begin in January 1986 were all delayed, first, because the Justice Department did not convene a grand jury and, second, because plaintiff, RTC and CST submitted an approximately 500-page protest of the proposed exemption denials.

31. By October 1986, LA CID's criminal investigation of the various Scientology Churches and individuals was moribund, and since the Justice Department had refused to pursue the matter before a grand jury, the case was about to be officially closed. By that time, the protests to the proposed denial of exempt status had bogged down the efforts of the EO defendants. In October 1986, with the investigation about to close, agents of LA CID attempted to utilize the news media to revive the investigation. The October 1986 issue of "Forbes" magazine contained an article by writer Richard Behar which falsely stated that the CID investigation was "gathering momentum." On information and belief, these and other

allegations which appeared in the Forbes article were "leaked" to Behar by defendants Lipkin with the knowledge and consent of defendant Xanthos to encourage the Department of Justice to more seriously consider the allegations set forth in the Special Agents Report. Indeed, Behar openly applauded the SAR's stated goal - the "ultimate disintegration" of the Church - in a recent Time magazine article. Defendant Owens, in turn, was quoted by Behar in the recent article, stating that there have been thousands of IRS agents involved in Church related tax matters for years. The IRS also apparently provided Behar with information concerning the Church's FOIA cases, as Behar was able to report on the number of such matters filed. Thus, the IRS' pattern of utilizing media to flank its actions against the Church continues to the present.

32. In November 1986, the Department of Justice rejected the request made by LA CID through LA District Counsel to convene a grand jury to continue the criminal investigation. The LA CID defendants, however, remained undaunted, and further sought to exploit their collusive connection to the EO and the LA EO defendants. In that regard:

a. On or before December 16, 1986, defendant Lipkin of LA CID met with defendant Corsi of LA EO to arrange for a meeting between Lipkin and Corsi's Group Manager, defendant Jucksch. At that December meeting, Lipkin discussed the LA CID files on the Church with Corsi and explained that defendant Friedlander of National Office EO had reviewed those files;

b. Defendants Lipkin, Corsi, and Jucksch met on January 5, 1987 to coordinate further actions with respect to plaintiff and other Scientology Churches;

c. In conjunction with National Office EO, LA CID and LA EO planned, coordinated, and implemented a plan to audit fourteen Churches of Scientology and two related trusts, all already exempt; and

d. LA District employees were invited to the National Office to review the data submitted by plaintiff, CST and RTC during the exemption application process.

Plaintiff and the other applicants, unaware of the ongoing collusion among the EO, LA EO, and LA CID defendants, continued to negotiate with EO to attain rulings of exempt status under 26 U.S.C. § 501(c)(3). Those negotiations continued throughout 1987.

33. As a result of the conduct of the defendants, and each of them, plaintiff has been coerced into diverting resources and attention away from the pursuit of its religious beliefs in order to defend itself against defendants' actions. Plaintiff also has been burdened in the free exercise of its religious beliefs by the intrusion of defendants into its records practices, beliefs and ecclesiastical structure and policies by the defendants as is hereinabove averred. Such coercion and burden each constitutes a violation of the Free Exercise Clause of the First Amendment to the United States

Constitution.

34. The collusion between the EO defendants, the LA EO defendants, and the LA CID defendants by which plaintiff was misled to believe that documents sought by defendants were for the purpose of a good faith exemption examination (rather than a sham exemption examination) when in fact such documents were being funnelled directly to criminal investigators, constitutes a violation of the Fourth Amendment to the United States Constitution.

35. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

36. The conduct of the defendants, and each of them, has been arbitrary and capricious, and has resulted in the deprivation of plaintiff's property. Such conduct, motivated by religiously rooted bias and prejudice, is a violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

37. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

SECOND CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

38. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 35, inclusive.

39. On or about December 4, 1987, defendant Friedlander informed Church representatives that the IRS insisted upon a "limited" review of the financial records of plaintiff RTC, and CST for 1986, to be conducted by the Los Angeles District Office, for the purpose of verifying the integrity of their records and to rule out the existence of any private inurement, the only remaining potentially disqualifying factor. In early 1988, defendants Friedlander and Brauer assured plaintiff of favorable exemption determinations as long as the limited review did not uncover inurement or an inadequate accounting system.

40. Those representations were false. Documents released by the IRS in later FOIA litigation included drafts of final denial letters for plaintiff, RTC and CST written by Friedlander and Darling in January of 1988, at the very time when defendants Brauer and Friedlander were representing to Church counsel that exemption was imminent. In fact, the representations were no more than a ploy to entice plaintiff and the other Scientology Churches to continue turning over detailed information to the IRS in violation of the Church's civil and constitutional rights.

41. On March 17, 1988, the National Office provided plaintiff, RTC and CST with new letters of assurance stating that the IRS was prepared to conduct a review so that "we may

complete favorable consideration" of the exemption applications. The letters further stated that the purpose of the review was to "determine the integrity of your financial and accounting systems" and "verify that no part of your net earnings inures to the benefit of any private shareholder or individual and that there is no other disqualifying activity." Each Church executed its letter of assurance, permitting the extremely unusual process of an on-site document review of plaintiff's records to proceed.

42. Extensive, on-site reviews began, starting with CST, in March of 1988. Despite the initial statement by Friedlander that the review would be limited, the Los Angeles office initially assigned four full-time agents to the review, and after eight weeks, another four full-time agents were added. This staffing represented 48 personnel weeks or roughly one year of IRS time. Friedlander and his superior, defendant Owens, testified that these examinations were the "most sweeping" examinations these officials had witnessed, "far exceeding" any they had previously experienced, and that the volume of information provided was "truly record-breaking."

43. The examination of CST was completed on June 2, 1988. At that time, the IRS Branch Chief responsible for the review stated that the agents had found nothing to show inurement and affirmed that, as to CST, "we have no concerns at this time." These statements confirm the findings of a memorandum written by defendant Friedlander in November 1987 which stated that private benefit ceased to be an issue following the death of L. Ron Hubbard in January 1986. Following the completion of the

examination to CST, the IRS Los Angeles office began its review of RTC, which was completed in June 1988 -- again with no concerns raised by the agents.

44. On June 22, 1988, the Church discovered that in May 1988, defendants Corsi, Young and Roth secretly interviewed two disaffected Scientologists, Richard and Vicki Aznaran, who were suing CSI and other Scientology churches. Prior to leaving the Scientology faith in 1987, Vicki Aznaran had served as one of RTC's officers. These defendants had engaged in deceitful conduct designed to prevent the Churches from discovering that the IRS investigation was actually proceeding on two tracks: one known to the Churches, which was based ostensibly on good faith cooperation between the churches and the IRS, and the other which was covert and designed to undermine the progress the Churches believed had been made towards the granting of exempt status. The discovery of this conduct raised serious concerns about whether the IRS was proceeding in good faith and in accordance with the March 17, 1988 agreement. The Churches immediately sought a meeting with the IRS to discuss their concerns.

45. It was later revealed that defendant Lipkin of the CID was instrumental in arranging the interview of the Aznarans by the EO agents, thus demonstrating the continuing ties between EO and CID. Plaintiff, RTC and CST were also not aware at the time that the two senior LA EO agents in the examination, defendants Young and Corsi, had met several times with LA CID during the review, that defendant Lipkin had briefed all of the agents involved in conducting the review,

and that defendants Corsi and Young had by this time received and reviewed the Special Agent's Report. Thus, CID collusion with LA EO did not end in 1985 when IRS District Counsel rejected CID's request for prosecution, nor in 1986 when the Justice Department refused to convene a grand jury.

46. During their interview of the Aznarans, defendants Corsi, Young and Roth openly displayed their animus toward the Church and the Scientology religion. The agents referred to Church religious services as a "dog and pony show", and referred to members of the Church as "crazy devotees". Defendant Young actually encouraged the Aznarans to "take a stand" against the Church. Defendant Roth compared the Scientology religion to drug addiction. These actions violate Internal Revenue Service policies which require an employee to maintain "strict impartiality" between the taxpayer and the government. These agents, who openly denigrated the Scientology religion, should have been removed from any examinations of Scientology churches under The Internal Revenue Manual, Handbook of the Rules of Conduct which indicates that an agent should be removed if his actions could lead others reasonably to question the employee's impartiality. I.R.M. 0735.1, Handbook of Employee Responsibilities and Conduct § 232.21, MT 0735.1-17 (November 26, 1986).

47. On June 22, 1988, plaintiff contacted IRS representatives from the Los Angeles office and asked why the the summonses had been issued to the Aznarans. The IRS refused to discuss the interview or confirm that it had taken place. Church counsel informed the IRS that the document review was

accordingly being suspended until the matter was resolved with the National office. On June 24, 1988, in response to a letter from the Church regarding its concerns that the document review was apparently being conducted in bad faith, defendant Friedlander admitted that the IRS "owed [the churches] an explanation."

48. In January of 1988, prior to the start of the on site review, final adverse determinations were already drafted and circulated by Friedlander and Darling. After June 27, 1988, while the Churches were awaiting defendant Friedlander's promised explanation, the IRS finalized the adverse determination letters from the pre-existing drafts without substantive amendment. On July 7, 1988, the IRS informed CST that in its view the IRS had proceeded in accordance with the March 17 agreement and that it viewed the suspension of the audit as a termination of that agreement.

49. The following day, July 8, 1988, plaintiff and the other Churches wrote the IRS reiterating that they had not terminated the examination, but were waiting for the promised explanation regarding the Aznaran interview. The letters stated that the Churches did wish to fulfill the terms of the March 17, 1988 agreement, and that all they sought was a meeting with the IRS to clarify matters before the examination procedure resumed. That same day the IRS issued final adverse ruling letters to all three churches denying tax-exempt status. These letters were nearly identical to those drafted six months earlier by Friedlander and Darling. Despite previous assurances to the contrary, the denials of the applications of

plaintiff and RTC were based, in part, on alleged commercialism in the sale of religious goods and services.

50. The IRS on-site review procedure was an utter sham, designed not to make any good faith determination of the tax exempt status of plaintiff, but merely to continue to collect information which would not otherwise have been provided to the IRS. The on-site reviews also included examination of myriad ecclesiastical and confidential Church scriptural materials and other materials concerning the religious practices of the Churches which had no reasonable relation to any tax exemption issue.

51. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff because of its position as Mother Church of the Scientology religion and, through those acts, have invidiously discriminated against plaintiff in their application of the laws of the United States, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

52. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

53. The conduct of the defendants, and each of them, has been arbitrary and capricious, and has resulted in the deprivation of plaintiff's property. Such conduct, motivated by religiously rooted bias and prejudice, is a violation of the

Due Process Clause of the Fifth Amendment to the United States Constitution.

54. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

THIRD CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

55. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 54, inclusive.

56. The IRS began additional harassive actions against plaintiff and Scientology parishioners commencing in October, 1988, when the IRS issued letters to several Scientologist taxpayers, who had claimed deductions on their tax returns for money paid to their Scientology churches for religious services, informing them that their cases were part of a "designated tax shelter litigation project entitled Scientology." Such a designation was blatantly improper and demonstrated discriminatory bias and creation of a suspect category of members of the Scientology religion.

57. Similarly, on February 14, 1989, the IRS office in Laguna Niguel, California sent a letter to two Scientologists concerning Church-related deductions, stating that no deduction would be allowed as they had not shown that Scientology is "other than a sham designed for the purpose of claiming

fictitious charitable contributions." This statement, too, was blatantly false and the result of bias, since even the IRS has repeatedly acknowledged that Scientology is a bona fide religion and that Scientology churches are bona fide churches. The IRS was forced to correct their files to delete these references after the Scientologists who received this letter prevailed in Smith v. Brady, No. CV 89-2584-RG(Bx) (C.D. Cal. 1990). Indeed, the IRS acknowledged that such designations were improper in a national office memorandum issued in 1986, yet the IRS continued labelling Scientologists as tax protestors as late as 1989.

58. Documents obtained in FOIA litigation reveal an entire set of procedures set up for the purpose of targetting the tax returns of individual Scientologists, monitoring and coordinating the investigations of these individuals, and falsely designating them as "tax protestors." These documents, from the Los Angeles District, show that the returns of Scientologists who claim deductions for their contributions to the Church are designated with a special code for "Alleged Contributions (incl. Scientology & Alleged Church)". This code is part of the Tax Protestor Program described in the Internal Revenue Manual, and allows the returns, which are treated as "priority cases," to be "controlled" through the IRS' nationwide computer system. A special questionnaire for Scientology cases is included for use by IRS examiners. An internal memo, designed to assist IRS examiners in handling these cases, lists several organizations which have never even existed, and claims that these are names used by the "Church of

Scientology."

59. Defendant Melvin Blough attempted to utilize the Church audit procedures of 26 U.S.C. § 7611 to identify thousands of parishioners of the Church of Scientology Flag Service Organization ("CSFSO") for the purpose of selecting their personal tax returns for audit. Blough testified that he wished to obtain records from CSFSO which would: (a) identify all of its parishioners for a three year period; (b) identify each of the courses delivered by CSFSO and describe them; (c) identify the courses taken by the parishioners; and (d) pull the tax returns of a number of these individuals. Blough stated that CSFSO provides courses to an estimated 8,000 parishioners a year, and further claimed that the IRS would use as many agents as needed to compile this information. In fact, nearly 100 parishioners of CSFSO have received audit notices regarding their contributions to the Church since Blough announced his plans. Blough also utilized the Cult Awareness Network ("CAN") as a means to improperly gather information regarding the Church. CAN is a modern day hate group, whose tactics include kidnapping, brainwashing and beating of individuals found to be guilty of holding "unacceptable" religious convictions. Despite these activities, CAN was granted tax exempt status by the IRS, and was used by Blough as an information gathering arm, for the purpose of procuring information on individual Scientologists and their businesses.

60. Assaults on churches of Scientology by or as a result of actions by IRS personnel have not been limited to the borders of the United States. William Connett is now stationed

as the IRS' foreign representative in France where he has a wide range of influence in European countries. Since his posting there have been raids on churches of Scientology by police and taxing authorities and unwarranted arrests of individual Scientologists in France, Italy and Spain. When two staff members of the Church of Scientology in Brussells were initially denied visas to travel to the United States, this was traced directly back to false information provided to the consulate officials by Connett.

61. In an effort to harass, discredit and smear plaintiff, to intimidate IRS employees who might otherwise treat plaintiff fairly or disclose IRS misconduct, and to evade FOIA disclosure obligations, defendant Keith Alan Kuhn has begun to proliferate unsubstantiated and patently false allegations against Scientology and Scientologists, which have been used as a pretext to manufacture security risks to IRS employees. In or about May 1990, Kuhn sent out a memorandum to each of the Regional Inspectors around the country, directing them to contact specifically named EO employees who were working on Scientology cases. Based on scurillous and unsubstantiated charges, Kuhn directed that these EO employees be told that there was a potential for harassment against them from the Church, thus creating a climate where plaintiff and other Scientology churches could not possibly receive unbiased treatment from any EO agent throughout the country. Kuhn's allegations themselves are entirely without merit. The IRS filed a declaration by Kuhn which contained these charges in a FOIA case brought by a Scientology Church. The District Court

judge in that case ordered the declaration stricken from the record, describing it as "scurrilous" and "unfounded".

62. After the collapse of the criminal investigation and after denying section 501(c)(3) exemption to plaintiff, RTC and CST, the nationwide examination of exempt and nonexempt Scientology Churches and entities which had been planned early in 1986 was resuscitated by defendants and the IRS. A three-day meeting on Scientology was convened at the IRS National Office on October 19, 20 and 21, 1988 to coordinate nationwide actions against various Scientology Churches, including plaintiff.

63. That three-day meeting was ordered by defendant Brauer, organized and convened by defendant Owens, and chaired by defendant Friedlander. Also in attendance were:

a. EO Operations employee Tom Miller, who had drafted the 1986 proposal to re-examine the exempt Scientology Churches;

b. Roderick Darling;

c. LA EO Branch Chief Mel Joseph, along with defendants Young and Corsi;

d. Defendant Blough;

e. IRS agents from at least the Brooklyn, Baltimore, and Los Angeles Regional offices; and

f. IRS National Office representatives.

64. Various strategic plans for a continued IRS campaign directed at Scientology were discussed at the three-day meeting in October 1988. Defendant Young prepared and delivered a

briefing at that conference in which he proposed that and explained how the IRS could use the assessment of tax liabilities under the Federal Insurance Contribution Act ("FICA") and the Federal Unemployment Tax Act ("FUTA") to exploit the non-exempt status of various Scientology Churches, completely disregarding the fact that the Churches in question, including plaintiff, had filed waivers seeking exemption from those employment taxes which had been accepted by the IRS.

65. At that same three-day meeting, format material for a nationwide campaign of examinations of exempt and non-exempt Scientology Churches was distributed and discussed, and the decision was made during that meeting to commence tax inquiries of plaintiff, Church of Scientology Western United States ("CSWUS"), Church of Scientology Flag Service Organization ("CSFSO"), Founding Church of Scientology of Washington, D.C. ("FCDC") and Church of Scientology of Boston ("Boston Church"). Those inquiries in fact did commence, upon the issuance of notices of tax inquiry to those Churches which were circulated during that three-day meeting.

66. Upon receipt of the virtually identical notices of tax inquiry, plaintiff, CSWUS, CSFSO, FCDC, and the Boston Church responded by pointing out inaccuracies and deficiencies in the standardized, coordinated notices and, despite those infirmities, responded to the questions posed by those notices. In each instance, however, the IRS issued a notice of church examination under the Church Audit Procedures Act, 26 U.S.C. § 7611. In four of those, summonses were issued and summons enforcement proceedings commenced in the appropriate district

court. In the CSFSO case, the matter is still pending in the United States District Court for Middle District of Florida; this Court, the Honorable Harry L. Hupp, presiding, quashed the majority of both the summonses issued to CSWUS and plaintiff; the United States District Court for the District of Massachusetts quashed the summons to the Boston Church outright. The FCDC examination was conducted, and despite nearly two years of intrusive inquiry, the IRS declined to cancel FCDC's exemption.

67. The coordinated examinations of those five distinct churches were coupled with concurrently timed IRS activities directed against other Scientology Churches and individual Scientologists. These various coordinated activities against Scientology are the responsibility of what defendant Owens has described as "thousands of [IRS] employees in key districts and district offices around the country and the National Office." Those coordinated actions have also been the subject of later meetings on Scientology at the IRS National Office, involving as many as 40 attendees from different IRS regions and divisions, in pursuit of what the SAR termed the "final halt to" and "ultimate disintegration of" Scientology.

68. Such coordination of IRS offenses against Scientology Churches and Scientologists generally also reaches down to the LA District level. Since approximately July 1989, monthly meetings have been held at the Pasadena, California courthouse that houses the United States Court of Appeals for the Ninth Circuit, to coordinate the actions of the Los Angeles EO (represented at such meetings by defendant Young), Examinations

Division, and upon information and belief, LA CID. These monthly meetings are arranged and coordinated by the Los Angeles District Counsel's office, and are attended by a number of District Counsel staff and, in fact, are chaired by defendant Jeglikowski, who supervises the meetings and the matters coordinated therein, against plaintiff and other Scientology Churches in disregard of the Constitution, the Internal Revenue Code, and policies set forth in the Internal Revenue Code. A regular topic of these meetings has been civil lawsuits involving plaintiff and other Scientology churches. The cases specifically include the civil suit filed by the Aznarans, and a case involving a former attorney for the Church. Defendant Jeglikowski has met with an attorney for one of the civil litigants, for purposes of coordinating actions between the IRS and the civil litigants against plaintiff.

69. The monthly meetings in Pasadena, like the meetings held from time to time at the National Office, are the vehicles by which defendants have singled out a religion and its churches and parishioners for singular and unfair treatment based upon their religious affiliation and set about to administer the Internal Revenue Code in a manner designed specifically to affect such co-religionists in an arbitrary and capricious manner, and to cause the harm hereinafter averred.

70. Plaintiff has made repeated efforts to resolve any legitimate concerns on the part of the IRS. As shown above, the Church has provided voluminous information to the IRS over the years to allay any concerns and to respond to any legitimate questions. These efforts on the part of the Church

have been either been perverted (as in the use of this information for purposes of a CID investigation), or rebuffed. Within the past few months, plaintiff once again attempted to resolve various issues with EP/EO representatives, including defendant Owens. However, the IRS continuously demanded the production of voluminous quantities of documents as a precondition for further talks. Most of the information requested had previously been provided to the IRS over the past years, yet the EP/EO representatives demanded it once again. When informed that the production of documents being requested on a voluntary basis was so extensive as to require months if not years to review, one representative of EP/EO remarked that this did not concern him, as he had twelve years left in the IRS before retirement.

71. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

72. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

73. The conduct alleged herein is ongoing and, unless

enjoined by this Court through an order forbidding defendants from any and all further participation in any matter involving the IRS and plaintiff or any other Scientology Churches or any other Scientology entities or parishioners, the harm alleged herein will continue and the Constitutional violations will persist to plaintiff's detriment.

FOURTH CLAIM FOR RELIEF

(For Fifth Amendment Violations by All Defendants)

74. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 73, inclusive.

75. Defendants have, in the course of conduct hereinabove averred, acted in violation of the Constitution, the laws of the United States, and the policies, and procedures, and practices of the IRS created by the IRS for the benefit of taxpayers. Such conduct is a denial of plaintiff's due process rights as set forth in the Fifth Amendment to the United States Constitution.

76. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

77. The conduct alleged herein is ongoing and, unless enjoined by this Court through an order forbidding defendants from any and all further participation in any matter involving the IRS and plaintiff or any other Scientology churches or any

other Scientology entities or parishioners, the harm alleged herein will continue and the Constitutional violations will persist to plaintiff's detriment.

WHEREFORE, plaintiff Church of Scientology International prays that:

78. Defendants, and each of them, be preliminarily and permanently enjoined from any and all further participation in and responsibility for any matter involving the IRS and plaintiff or any other Scientology Church or entity, or any Scientology parishioner;

79. Plaintiff be awarded damages according to proof, which are believed to be in excess of $20,792,850 in direct expenditures by plaintiff, and consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million, and

80. The Court award and order such other and further relief that it deems appropriate under these circumstances.

Dated: August 12, 1991

Respectfully submitted,

QUINN, KULLY AND MORROW

COOLEY, MANION, MOORE &
JONES, P.C.

BERRY & CAHALAN

BOWLES & MOXON

WILLIAM T. DRESCHER

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CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On June 14, 1994 I served the foregoing document described as SEPARATE STATEMENT OF UNDISPUTED FACTS WITH REFERENCE TO SUPPORTING EVIDENCE IN SUPPORT OF MOTION OF CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL FOR SUMMARY ADJUDICATION OF GERALD ARMSTRONG; DOES THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

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[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 14, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward Matt Ward

Print or Type Name Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

2227

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MARIN COUNTY CLERK
BY

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LOS ANGELES SUPERIOR COURT
JUN 15 1994
EDWARD M. KRITZMAN, CLERK
E Lopez
BY E. LOPEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, A California not-for-profit religious corporation;

Plaintiff,

v.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendant.

AND RELATED CROSS-ACTION.

Case No. BC 052395

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT

Date: Aug. 3, 1994
Time: 8:30 a.m.
Dept: 30

Trial Date: Nov. 7, 1994
Disc. Cut-off: Oct. 7, 1994
Mtn. Cut-off: Oct. 21, 1994

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I. INTRODUCTION

As described in separately filed motions for summary adjudication of numerous causes of action of the Amended Complaint, in December 1986, plaintiff and cross-defendant Church of Scientology International ("the Church") entered into a confidential Mutual Release of All Claims and Settlement Agreement (the "Settlement Agreement" attached as Exhibit "A" to the Declaration of Andrew H. Wilson [the "Wilson Decl."]) with defendant and cross-complainant Gerald Armstrong ("Armstrong"), the terms of which required Armstrong, but not the Church to refrain from aiding others in litigation and to refrain from discussing with third parties his experiences with the Scientology faith. In return, Armstrong received a substantial sum of money and a mutual release from the Church.

In its First Amended Complaint, the Church seeks damages for admitted breaches of the Settlement Agreement by Armstrong and a permanent injunction. In response, Armstrong has filed a Cross-Complaint alleging, inter alia, that the Church breached the Settlement Agreement (Amended Cross-Complaint, Third Cause of Action, hereinafter "Breach Claim") and abused process (id., Second Cause of Action, hereinafter "Abuse of Process Claim"). While Armstrong's allegations of supposed misconduct on the part of the Church are certainly colorful, the undisputed facts nonetheless prohibit any recovery by Armstrong for either of these claims.[1] The conduct allegedly constituting the "breach" is not prohibited by the Settlement Agreement at all. Moreover, the conduct which is alleged to "abuse" process is: (a) completely barred by the statute of limitations; (b) privileged pursuant to Civil Code § 47(2); and/or (c) does not involve the use of

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[1] Armstrong has named a string of other entities and individuals as cross-defendants, but has made no effort to serve any of them. The cross-complaint was filed on July 22, 1992 and amended on October 7, 1992. The Church accordingly requests that the Court exercise its discretion, and dismiss the cross-complaint as to these unserved cross-defendants. L.A.S.C. Rules 1306.1.2, 1307.1.

"process" for an "ulterior purpose."

Accordingly, the Court should enter judgment for the Church on the Second and Third Causes of Action of the Amended Cross-complaint.

II. STANDARD OF REVIEW

Summary judgment is properly granted when the evidence in support of the moving party establishes there is no issue of material fact to be tried. Code of Civil Procedure Section 437c. Summary adjudication is the proper procedure for determining an issue of law. See, Zahn v. Canadian Indem. Co. (1976) 57 Cal.App.3d 509, 512. The trial court must decide if a triable issue of fact exists. Pittelman v. Pearce (1992) 92 Daily Journal D.A.R. 7371, 7372.

If none does, and the sole remaining issue is one of law, it is the duty of the trial court to determine it. Id.

III. THE CHURCH IS ENTITLED TO SUMMARY ADJUDICATION OF THE BREACH CLAIM BECAUSE ITS ALLEGED CONDUCT DID NOT, AS A MATTER OF LAW, BREACH THE AGREEMENT

A. There Are No Provisions In The Agreement Which Preclude The Conduct Allegedly Constituting The Breach

The interpretation of a written instrument is essentially a judicial function to be exercised according to the generally accepted canons of interpretation. Western Medical Enterprises, Inc. v. Albers (1985) 166 Cal.App.3d 383, 389. With respect to the Breach of Contract Claim, there are no questions of fact to be resolved. The sole issue is a matter of law. If the Court finds that the Settlement Agreement does not prohibit the acts alleged to constitute the breach, then the Third Cause of Action must be dismissed. Armstrong alleges that the Church breached the Settlement Agreement: "[B]y making reference to Armstrong (a) in communications to the press, (b) in filing pleadings and declarations in various litigations." (Paragraph 71 of the Cross-Complaint.) The Settlement Agreement does not prohibit these acts and contains not one, but two separate clauses whose clear import is to preclude any attempt to go beyond the four corners of the Agreement. Paragraph 9 is an integration clause and paragraph 18B provides that the parties have made no representations not contained in the Settlement Agreement and did not rely on any representation or statement not contained in the Settlement Agreement.

There are no provisions in the Settlement Agreement prohibiting the Church from referring to Armstrong in its communications with the press or in legal pleadings or declarations. The only provisions which refer to the conduct of the Church are contained in Paragraphs 3, 5, 6, and 7.A and B.

Paragraph 3 requires the payment of money, which Armstrong admits he received. [Sep.St.No. 13.][2]

Paragraph 5 requires the filing of a dismissal with prejudice of the case from which the settlement arose. The Court may take judicial notice of the filing of the notice of dismissal with prejudice on December 11, 1986 in the action Armstrong v. Church of Scientology of California, Los Angeles Superior Court Case No. 420 153. Evidence Code Section 452(d). [Sep.St. No. 14.]

Paragraph 6 is the standard waiver of all rights under Civil Code Section 1542. The Third Cause of Action does not allege breach of this section.

Paragraph 7.A. contains an agreement by all parties that liability is denied and that the settlement cannot be treated as an admission of liability for any purpose. The Breach Claim does not allege breach of this section.

Paragraph 7.B. contains an agreement that none of the parties bound by the agreement shall use past activities of any of the parties as a basis for the filing of a future lawsuit.

None of the above-recited paragraphs prohibit the conduct allegedly constituting the breach. Moreover, there is no language contained in the contract which would be even colorably susceptible to a meaning which would prohibit such conduct. Accordingly, the Church is entitled to judgment on the Third Cause of Action.

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[2] References to Exhibits are to Exhibits to the concurrently filed Separate Statement of Undisputed Facts as "Sep.St.No. __."

B. Armstrong Has Admitted That The Settlement Agreement Does Not Prohibit The Conduct Allegedly Constituting The Breach

The admissions of a party receive an unusual deference in summary judgement proceedings. FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367, 398. An admission is binding unless there is a credible explanation for the inconsistent positions taken by a party. Id.

In his deposition, Armstrong admitted that he knew the provisions of the Settlement Agreement prevented him from disclosing confidential information but that the Church was not subject to those provisions. Indeed, during his deposition, Armstrong expressed the extreme displeasure which he claimed to have felt with his own attorney when that attorney showed him the Agreement, which, as Armstrong read it, "says on its face they can continue to attack you with impunity, Mr. Armstrong." [Sep.St.No. 15.] Nonetheless, Armstrong signed the Agreement:

> Q. And at the time you got that agreement you recognized that problem with it, that it didn't prohibit them from saying whatever they wanted about you; right?
>
> A. Well, I also understood from basic understanding and from talking to Michael Flynn that as soon as they open their mouth and say one word, they've waived it, you have a new unit of time, they've violated it, that's it, you're free to talk, you can respond because you cannot, this does not have to do with future acts.
>
> It does not say specifically they are free to, they will interpret it that way.

[Id.]

In fact, Armstrong has testified that he did not believe when he signed the Agreement that the Church would be able to enforce the Agreement, and obtain what they had bargained for, because the provisions of the Agreement "were not reciprocal" and, in Armstrong's mind, did not bind the Church. [Sep.St.No. 15.] In opposing plaintiff's motion for preliminary injunction, Armstrong argued specifically that the non-disclosure provisions were not binding on the Church: "Paragraph 7D prohibited Armstrong from speaking to others about Scientology, but does not prohibit Scientology from talking to others about Armstrong." [Id.]

C. Armstrong May Not Rely On His Belief That The Settlement Agreement Was Reciprocal

It is anticipated that Armstrong will attempt to create material issues of facts as to his (mistaken) "belief" that the Settlement Agreement was "reciprocal." However, that approach must be rejected for two reasons. First, Armstrong cannot claim a mistake of law. In Haviland v. Southern California Edison Co. (1916) 172 Cal. 601, the plaintiff claimed that he was deceived into the belief that the release he signed was not binding, "... or, in other words, that it did not mean what it said." The Supreme Court rejected that argument stating that:

> The plaintiff knew that he was signing a [document] which, by its plain terms, released defendant from liability. He was under no misapprehension regarding its language or its meaning.

Id. at 609.

It is well settled that misrepresentations of the legal interpretation of a contract, at least where there is no relation of trust or confidence between the parties, do not amount to fraud, and will not furnish a ground for rescission of a contract. See, Id. at 608. The Haviland court noted that if the kind of evidence adduced by plaintiff could be regarded as sufficient to establish a mistake of law, "... there would be little binding force in written agreements, knowingly and voluntarily executed by competent parties in full possession of the facts." Id. at 610.

In this case, Armstrong has alleged that his attorney told him that he had expressed to the Church's attorneys that the document was unenforceable and that allegedly they agreed. Yet Paragraph 18(B) of the document states that the parties "... acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein." Moreover, the Church and Armstrong were negotiating an arm's length transaction, and as in Haviland, Armstrong cannot now claim mistake of law since he was under no misapprehension that the contract did not state the Church was bound by any of the promises Armstrong clearly would be held to.

Second, if Armstrong fails to show a triable issue of fact with respect to the Church's defense or that the breach of contract element exists, no amount of factual conflicts upon other aspects of the case will affect the result and the motion for summary judgment should be granted. (Emphasis Added.) Frazier, Dame, Doherty, Parrish & Hanawalt v. Bocardo, Blum, Lull, Niland, Terlink & Bell (1977) 70 Cal.App.3d 331, 338. The Settlement Agreement speaks for itself. There is no language in the Settlement Agreement barring the Church or the other cross-defendants from referring to Armstrong in communications with the press or in pleadings and declarations.

Extrinsic evidence is admissible to interpret the instrument, but not to give it a meaning to which it is not readily susceptible, and it is the instrument itself that must be given effect. Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861, 865. Armstrong cannot refute the clear language of the contract which he signed and under which he acknowledged that the Settlement Agreement "contained the entire agreement between the parties," that he entered into the agreement "freely, voluntarily, knowingly and willingly, without threats, intimidation or pressure...", that he carefully read the agreement and understood its contents, that he received independent legal counsel from his attorneys, and that there were no collateral agreements except what was expressly stated in the contract. [Sep.St.Nos. 3-9, 16.]

It is solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence. Id. The only possible extrinsic evidence would be Armstrong's contention that the Settlement Agreement actually meant something that it does not say. Armstrong admitted he knew the Settlement Agreement did not subject cross-defendants to any confidentiality provisions, and in fact, it does not. Therefore, summary adjudication of the Breach Claim in favor of the Church is required.

IV. THE SECOND CAUSE OF ACTION FOR ABUSE OF PROCESS MUST BE DISMISSED BECAUSE THE ALLEGED ACTS ARE EITHER OUTSIDE THE ONE-YEAR STATUTE OF LIMITATIONS OR THERE IS NO MISUSE OF PROCESS

The Second Cause of Action for Abuse of Process is inadequate for the following reasons: (1) the alleged pre-July 22, 1991 conduct is precluded by the one-year statute of limitations; (2) the alleged post-July 22, 1991 conduct is either (a) privileged pursuant to Civil Code Section 47(2) and/or (b) does not involve the use of "process" for an "ulterior purpose."[3]

The original Cross-Complaint was filed on July 22, 1992; an amended version was filed on or about October 7, 1992. As will be discussed, conduct occurring before July 22, 1991 is precluded by the applicable limitations statute.

Armstrong alleges that the Church abused the process of the court in Armstrong I, in the present lawsuit, and in other litigation, with the ulterior motive to suppress evidence, obstruct justice, assassinate cross-complainant's reputation, and to retaliate against cross-complainant in the lawsuits. Cross-complaint at ¶¶ 65 and 66. There are no allegations even inferring that the Church used the process of the Court to somehow pressure Armstrong for some collateral purpose. The only "purpose" alleged is that the Church wanted to "attack" Armstrong and prevent him "from being able to take any effective action to protect himself." Yet there are no allegations explaining what advantage the Church supposedly gained.

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[3] The Church does not, by the making of this motion, admit that any of the conduct alleged by Armstrong actually occurred; indeed, the bulk of the pre-1991 acts which Armstrong alleges are demonstrable figments of his fertile imagination. For the purposes of this motion, however, any factual dispute as to these allegations is irrelevant; even as alleged, they do not state a claim for abuse of process.

A. The Conduct Alleged To Have Occurred Before July 22, 1992 Is Precluded by the Statute of Limitations

The one-year statute of limitations pursuant to Code of Civil Procedure section 340 applies to a cause of action for abuse of process. Thornton v. Rhoden (1966) 245 Cal.App.2d 80, 95, 53 Cal.Rptr. 706, 717. In Thornton, the plaintiff alleged that defendant had abused process by taking, transcribing and filing a deposition in which the defendant made false and defamatory claims. The deposition was taken and transcribed more than one year before the action for abuse of process was filed, and filed one year exactly before the filing of the abuse of process complaint. The Court of Appeal found that the alleged taking and transcribing of the deposition were beyond the statute, and could not be considered part of the plaintiff's abuse of process claim. Id.[4]

Here, alleged conduct which purportedly occurred prior to July 22, 1991 is similarly beyond the statute of limitations, and any abuse of process claim which could possibly attach to those claims (and the Church considers that none could) is time-barred. On the face of the cross-complaint, the conduct alleged in paragraphs 13, 14, 15 through 24; 26 and 27; 29 and 30; 33 through 38; 40; 43 through 48 and 57, are alleged to have occurred before July 22, 1991.[5] Accordingly, the conduct alleged in those paragraphs is barred by the statute of limitations.

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[4] The court went on to hold that defendant's actions were privileged, and "even if we disregard the privilege, it is obvious that just taking the ordinary steps in connection with the taking, transcribing and filing of the deposition cannot be an abuse of process." 53 Cal.Rptr. at 720.

[5] Moving parties do not waive their right to assert that other legal grounds also exist which preclude some or all of the conduct alleged in the foregoing paragraphs from stating a claim for abuse of process.

B. The Conduct Post-July 22, 1991 Cannot Be the Basis For An Abuse of Process Claim Because It is Either Not a Use of Process And/Or Is Privileged.

1. Conduct Not Constituting Use of Process

The tort of abuse of process has two elements. First, there must be wrongful use of process, not merely a request for an initiation of process; and second, the act complained of must involve the use of process. (Emphasis in original.) Adams v. Superior Court (1992) 2 Cal.App.4th 521, 530 citing generally, Prosser & Keeton, Torts (5th Ed. 1984) Abuse of Process § 121, pp. 897-898. As explained in Adams:

> Process is action taken pursuant to judicial authority. It is not action taken without reference to the power of the court. Thus, serving upon plaintiff of false notice that a bench warrant had been issued is not process, because in making the false statement defendant took no action pursuant to court authority. (citations omitted.) [¶] Merely obtaining or seeking process is not enough; there must be subsequent abuse, by a misuse of the judicial process for a purpose other than that which it was intended to serve. (Citations omitted.)

Id. The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as a surrender of property, or the payment of the money by the use of the process as a threat or a club. Czap v. Credit Bureau of Santa Clara Valley (1970) 7 Cal.App.3d 1, 5 citing Prosser, Torts at p. 877. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or in the formal use of the process itself, which constitutes the tort. Id.

Thus, as explained in Adams:

> The gist of the tort is the improper use of the process after it is issued. (Citations omitted.) Here all that is described is a motion to prevent reduction of felonies to misdemeanors. That motion did not result in the issuance of any process of the court which was then abused. It produced no active judicial authority, no writ or order which was then misused. Privileged or not, such activity falls short of the tort of abuse of process, which most generally consists of acts exterior to the lawsuit, such as attempted extortion or pressure on a debtor by misuse of court orders. (Emphasis in original.)

Adams v. Superior Court, supra, 2 Cal.App.4th at 531.

The conduct alleged in paragraphs 49, 51 and 55, although occurring after July 22, 1991, similarly "falls far short" of the requirements of a claim for abuse of process.

Paragraph 49: This paragraph merely alleges an exchange of documents between a client and its counsel. There is no use of process claimed and none can be inferred from the allegation.

Paragraph 51: Armstrong alleges here that the Church placed Armstrong under surveillance by private investigators after Armstrong began to breach the Settlement Agreement. Again, there is no process involved.

Paragraph 52: Armstrong pleads that the Church filed declarations about him in still another case in which he is not a party, Aznaran v. Church of Scientology of California, et al., U.S.D.C. No. CV 88-1786 JMI(Ex) ("the Aznaran case"). This is not a use of process.

Paragraph 55: The thrust of the allegations of this paragraph are that cross-defendants' counsel refused to release persons other than Armstrong from non-disclosure provisions contained in settlement agreements which those persons had entered into. Once again, there is no process involved.

2. Privileged Conduct

Civil Code Section 47 provides in relevant part that "A privileged publication or broadcast is one made: . . . . (b) In any judicial proceeding. . . ." As the California Supreme Court recently re-emphasized,

> For well over a century, communications with "some relation" to judicial proceedings have been absolutely immune from tort liability by the privilege codified as section 47(b). At least since then-Justice Traynor's opinion in Albertson v. Raboff (1956) 46 Cal.2d 375, 295 P.2d 405, California courts have given the privilege an expansive reach. Indeed, as we recently noted, "the only exception to [the] application of section 47(2) [now § 47(b)] to tort suits has been for malicious prosecution actions. [Citations]."

Rubin v. Green (1993) __ Cal.3d ___, 17 Cal.Rptr.2d 828, 831, quoting Silberg v.

Anderson (1990) 50 Cal.3d 205, 216, 266 Cal.Rptr. 638, 786 P.2d 365. In Rubin, the court held that even communications and communicative conduct bearing "some relation" to an anticipated lawsuit were privileged. Id. at 832 - 838.

Moreover, in Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42 Cal.3d 1157, 232 Cal.Rptr. 567, 728 P.2d 1202,, the California Supreme Court, upholding a long line of appellate court cases, held that the exact conduct alleged by Armstrong -- filing or maintaining a lawsuit -- cannot support a claim for abuse of process, stating:

> The relevant California authorities establish . . . that while a defendant's act of improperly instituting or maintaining an action may, in an appropriate case, give rise to a cause of action for malicious prosecution, the mere filing or maintaining of a lawsuit -- even for an improper purpose -- is not a proper basis for an abuse of process action. The overwhelming majority of out-of-state precedents have reached the same conclusion.

42 Cal.3d at 1169 (citations omitted). The Court went on to explain that it agreed with the underlying rationale for these decisions, which is to afford litigants an appropriate accommodation between the freedom of the individual to seek redress from the courts, and the interest of a potential defendant in being free from inappropriate litigation. The Court noted that the common law tort of malicious prosecution, which provides this accommodation, requires that a plaintiff prove that "the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his . . . favor . . . ; (2) was brought without probable cause . . .; and (3) was initiated with malice. . . ." Id., quoting Bertero v. National General Corp. (1974) 13 Cal.3d 43, 50, 118 Cal.Rptr. 184, 529 P.2d 608 [citations omitted].

If Armstrong were permitted to allege an abuse of process claim against the Church merely by alleging that the Church had filed or maintained a lawsuit for some ulterior purpose, the protections afforded by the requirements of a malicious prosecution claim would be annihilated. In the words of the California Supreme

Court,

> If . . . the filing of an action for an improper 'ulterior' purpose were itself sufficient to give rise to an abuse of process action, the 'lack-of-probable-cause' element of the malicious prosecution tort would be completely negated; even if an individual could demonstrate that he had reasonable cause to believe that his initial lawsuit had merit when he filed the action, he would still face potential liability under an abuse of process theory. Because the lack-of-probable-cause requirement in the malicious prosecution tort plays a crucial role in protecting the right to seek judicial relief, we agree with the prior decisions which have concluded that this element may not be circumvented through expansion of the abuse of process tort to encompass the alleged improper filing of a lawsuit.

Id. at 1169-1170 (citations omitted, emphasis supplied).

Paragraphs 53 and 54: In these paragraphs, Armstrong asserts that the Church abused process by attempting to enforce the Settlement Agreement which Armstrong signed in 1986, first by seeking to have the Agreement enforced by the Court which, pursuant to the terms of the Agreement, continued to maintain jurisdiction over the performance of the agreement, and then by filing a complaint in this action. Finally, Armstrong asserts that the Church abused process by seeking to have him held in contempt for wilful violations of a temporary restraining order issued in March, 1992, by Judge Dufficy of the Marin County Superior Court. As a matter of law, none of these actions could constitute an abuse of process.

The motion to enforce the Settlement Agreement was filed by the Church because, after spending the $800,000 which he accepted to settle his claims, Armstrong began, in July, 1991, to openly and admittedly breach the provisions of the Settlement Agreement in which Armstrong had promised not to aid other litigants against the Church, and not to discuss his experiences concerning the Church, absent lawful subpoena.[6] [Sep.St.No. 19, 21.] That motion was brought in the settled action because the Settlement Agreement provided that the Los Angeles Superior Court would have continuing jurisdiction to enforce the Settlement Agreement in the event of a breach. [Sep.St.No. 22, 24.] The Court denied the Church's motion on the narrow ground that the Settlement Agreement itself was insufficient to confer upon it continuing jurisdiction. The merits of the motion were never reached. [Sep.St.No. 25.] Thereafter, the Church sought to enforce the Agreement by filing the Complaint in the instant case. [Sep.St.No. 26.] On May 28, 1992, the Honorable Ronald Sohigian issued a preliminary injunction enforcing the Settlement Agreement, finding, inter alia, that the Church had demonstrated a substantial probability of success on the merits, had been irreparably harmed by Armstrong's breaches, and that the earlier denial of the motion to enforce the settlement agreement on jurisdictional grounds did not preclude the bringing of the action. [Sep.St.No. 31.]

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[6] For a complete description of Armstrong's breaches which compelled the Church to take legal action, see the Church's separately-filed Motion for Summary Adjudication of the Twelfth Cause of Action, the Memorandum of Points and

On May 16, 1994, the Second District Court of Appeal affirmed the order granting a preliminary injunction, which it held restrained "Armstrong's voluntary intermeddling in other litigation against [the] Church, in violation of his own agreement. [Sep.St.No. 32.] In taking these actions, the Church had no motive other than to enforce the Agreement and recover damages for its breach.

Under these circumstances, neither the motion to enforce nor the bringing of this action could possibly be considered an abuse of process, no matter what ill motive Armstrong attempts to graft onto the Church's actions. In order for an action to constitute an abuse of process,

> Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.

Authorities, Separate Statement of Undisputed Facts filed in support thereof, incorporated herein by reference.

Thornton v. Rhoden, supra, 53 Cal.Rptr. at 720.

Here, Armstrong has alleged nothing more than that the Church used legal process to enforce the Settlement Agreement which he signed, and which the Church has fully performed. Armstrong does not claim that the Church is, by its actions, attempting to obtain anything other than that which the Church bargained for in 1986. He makes no claim that the Church has used this action, or the previous action, to seek to obtain any goal other than those plainly stated in the moving papers and the Complaint: Armstrong's performance of the terms of the contract whose benefits he has received. This falls precisely within the rule of the Adams case. There, the court upheld the sustaining of a demurrer to a claim for abuse of process because it found that the motion brought by the defendant was not an act exterior to the lawsuit, or brought to exert undue pressure by misuse of a court's orders.

So, here, Armstrong's post-settlement dislike of the terms of the Settlement Agreement, his mischaracterization of them, and his arguments that they are somehow "unfair" or "improper" are immaterial. The Church is not seeking any collateral objective by moving to enforce the Settlement Agreement, or by bringing an action to enforce it. It seeks only to enforce the Settlement Agreement. Abuse of process does not lie for the filing of an action for breach of contract. See, Oren Royal Oaks, supra.

Armstrong's assertion that the Church's filing of a request for an Order to Show Cause Re: Contempt for Armstrong's violation of the temporary restraining order issued by Judge Dufficy violated process is equally unavailing. Judge Dufficy ordered the action moved from Marin County to Los Angeles County, but only after issuing a temporary restraining order prohibiting Armstrong from further breaching the Settlement Agreement. [Sep.St.No. 27.] Before the file was moved to Los Angeles, but after the TRO was issued, Armstrong discussed his experiences with the Church for hours with attorneys for litigants against protected entities, and gave interviews to the press in which he also disclosed his experiences with the Church. [Sep.St.No. 28.] The Church argued in its moving papers that each of these activities violated the TRO. [Sep.St.No. 29.] The Marin Court did not rule on the merits of the Church's motion, but simply instructed the Church to re-file it in Los Angeles. [Sep.St.No. 30.][7] Again, the Church was plainly and obviously seeking only the object of its lawful litigation, and not acting with any collateral purpose. Indeed, the Church has openly and obviously sought, throughout this entire litigation, merely to obtain the benefits of its bargain with Armstrong. His present dislike for his negotiated terms does not render a lawful action in pursuit of them "abuse of process."

Applying the privilege broadly, as this Court must, most certainly the Church was privileged to make the motion to enforce the Settlement Agreement, to file this lawsuit and to seek an order of contempt.

Paragraph 50: The "conduct" is an allegedly false allegation in a complaint by cross-defendants against the IRS that Armstrong was involved in plans to take over cross-defendants' organization. As set forth above, the mere filing of a complaint cannot constitute abuse of process. Oren Royal Oaks, supra.

Even assuming, arguendo, that the quoted statements concerning Armstrong were false (and they were not), the statements ar absolutely privileged. "[A]n attorney at law is absolutely privileged to publish false and defamatory matters ... during the course and as a part of a judicial proceeding in which he participates as counsel, if it has some relation thereto." Friedman v. Knecht (1967) 248 Cal.App.2d 455, 460. The defamatory matter must have "some reference to the subject matter of the pending litigation, although it need not be strictly pertinent or relevant to any issue involved therein..." Id. The complaint to which Armstrong refers is a complaint concerning an illegal criminal investigation launched by the LA CID against the Church in 1984. The allegation of which Armstrong complains is one of eighty which set forth in detail the constitutional violations occasioned by the CID investigation. The use of Armstrong as an informant and conspirator is obviously relevant to the causes of action set forth in the complaint. [Sep.St.No. 33-34.]

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[7] Once in Los Angeles, the Church concentrated its attention on obtaining a preliminary injunction, rather than on obtaining a conviction of Armstrong for contempt of the TRO. [Sep.St.No. 31.] However, Armstrong's contemptuous disregard for court orders has not gone unnoticed; on December 31, 1992, the Church sought and obtained an Order to Show Cause Re: Contempt against Armstrong for deliberate violations of the Preliminary Injunction, which is now set for hearing on October 20, 1994.

Paragraph 52: Finally, Armstrong pleads that the Church filed declarations about him in still another case in which he is not a party, Aznaran v. Church of Scientology of California, et al., U.S.D.C. No. CV 88-1786-JMI(Ex) ("the Aznaran case"). The declarations to which Armstrong refers were only filed after Armstrong began working for the Aznarans' lawyers on the Aznaran case, and describe telephone conversations between Armstrong and the Church's counsel concerning the Aznaran case. Armstrong also filed his own declarations in the Aznaran case. [Sep.St.No. 20, 21.] Armstrong thus interjected himself into the Aznaran case as a purported witness and as a paralegal.[8] As described above, the declarations are privileged under Civil Code § 47(2). Moreover, there are no allegations in the cross-complaint which indicate that the declarations were then used for any improper purpose as to Armstrong. At most, and stretching, the allegations sound in some form of defamation, also protected by the litigation privilege.

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[8] Armstrong is presently prohibited by the Preliminary Injunction from acting as a paralegal on the Aznaran case.

V. CONCLUSION

Armstrong's Amended Cross-Complaint purports to allege claims for Breach of Contract and Abuse of Process, but those claims cannot survive summary adjudication. The undisputed facts show that the Church has not breached any provision of the Settlement Agreement which constitutes the contract between the parties. The bulk of the actions claimed by Armstrong to be "abuse of process" are long barred by the statute of limitations; the remainder do not involve the use or process at all, or are absolutely privileged, even if they occurred as they are alleged. The Church is accordingly entitled to summary adjudication of the Second and Third Causes of Action of the Amended Cross-Complaint.

Dated: June 14, 1994

Respectfully submitted,

BOWLES & MOXON

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Attorneys for Plaintiff and
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SCIENTOLOGY INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On June 14, 1994 I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 14, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward	Matt Ward
Print or Type Name	Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

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